



Sonoma County Water Agency Request for Proposals

CF/46-0-21 RFP (POWER PURCHASE AGREE FOR FLOATING
SOLAR PHOTOVOLTAIC AT SONOMA COUNTY WATER
AGENCY PONDS) TW NO (ID 5021)

Deadline for Submission
May 13, 2014

CONTACT:

Rebecca Simonson

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**RE: REQUEST FOR PROPOSALS FOR POWER PURCHASE AGREEMENT FOR
FLOATING SOLAR PHOTOVOLTAIC (PV) AT SONOMA COUNTY WATER
AGENCY PONDS**

The Sonoma County Water Agency (Water Agency) invites proposals from firms interested in financing, designing, constructing, owning, operating, monitoring, and maintaining floating photovoltaic power system(s) (PV Systems) at various designated Water Agency ponds, and entering into a Power Purchase Agreement (PPA) for sale of power from each of the PV Systems to the Water Agency. A sample PPA is attached as Exhibit A. In addition to the purchase and sale of power, the PPA shall provide the Water Agency with a right to acquire one or more of the PV Systems after certain periods of time.

The proposed PV Systems would be built on ponds leased from the Water Agency or one of the Sanitation Zones or Districts managed by the Water Agency. A draft lease agreement is included in Exhibit B.

Background

The Water Agency owns or manages ponds at seven sites (see maps and drawings included as Exhibit C), upon which we propose to place up to 21 MW (AC) of PV systems. See table below:

Zone/ District	Water Storage Facility	Usable pond surface area acres	Estimated Annual PV Production	
			MW DC	MWh/yr
Airport Larkfield Wikiup Sanitation Zone (ALWSZ)	South Pond	5.8	1.9	2,862
	North Pond	14.8	4.9	7,326
	Oceanview Reservoir (Site D)	5.0	1.7	2,491
	ALWSZ subtotal	25.6	8.6	12,680
Sonoma Valley County Sanitation District (SVCSD)	R-1	7.9	2.6	3,900
	R-2	9.0	3.0	4,449
	R-4	13.9	4.6	6,881
	R-5	5.8	1.9	2,877
	SVCSD subtotal	36.5	12.2	18,122
Total		62.1	20.8	30,802

The size of the project at each site shall be determined by the cost effectiveness of the PPA purchase price. Proposers may submit a proposal for less than 1 MW at any given site to avoid California Independent System Operator (CAISO) scheduling fees and/or they may utilize the maximum area possible for cost effectiveness with CAISO scheduling fees built into the PPA purchase price. Proposers may elect to submit a proposal including any single pond, or any combination of these ponds, and need not provide proposals for all ponds. Proposers shall submit proposals for each site in sufficient detail to allow the Water Agency to compare proposals on a site-by-site basis. It is not necessary that a proposer submit a proposal for all seven sites. The Water Agency may move forward with all sites, selected sites, or no sites.

Proposers would finance, design, construct, own, operate, monitor, and maintain the PV Systems, and sell all power from the panels to the Water Agency. The PV Systems would consist of installing floating photovoltaic panels atop ponds. The number and type of photovoltaic panels, supporting structures, configuration, and orientation of panels and rows of panels shall be dependent upon the optimum scheme to cost effectively maximize energy generation at the sites. Proposers should evaluate the seven sites based on power production potential, project cost, proximity to power transmission and distribution lines, significance of environmental impacts, and any other parameters deemed reasonable by the proposer.

The purpose of the PV Systems is to generate renewable electric power and related environmental attributes to be sold to the Water Agency. The Water Agency intends to resell the power to electric power utilities, private brokers, joint power authorities, municipalities, community choice aggregators, or similar entities. In addition, the PPA must allow the Water Agency to assign the PPA to such entities, subject to Proposer's evaluation of the creditworthiness of the assignee.

The awarded Proposer will secure from governing agencies and the utility company all required rights, permits, approvals, and interconnection agreements at no additional cost to the Water Agency.

Minimum Qualifications

Proposer shall have a valid license to construct PV systems in the state of California and shall have experience in providing the services associated with installing and operating PV systems of this size and complexity (at least three PV system projects of at least 500 kW DC each within the past three years, which need not have included any floating solar elements). Proposer's firm shall be well established with a full-time qualified staff able to provide the required PV system design and construction services. The Water Agency has determined that all Proposers must possess or provide subcontractor(s) possessing current California Contractor's License in at least one of the following classes throughout the duration of the Project:

- A - General Engineering Contractor
- C10 - Electrical Contractor
- C46 - Solar Contractor

If Proposer is a specialty contractor, the majority of the work must fall within the specialty classification, and all work to be performed outside of the licensed specialty must be performed by appropriately licensed subcontractors.

All subcontractors employed by Proposer must have a current license in the specialty for the work being done, and are limited to performing only work for which licensed.

Proposer shall have insurance as detailed in the sample Lease Agreement in Exhibit B.

Site Visits

Two site visits that will each cover all sites are scheduled for 9:00 am, Wednesday, April 23, 2014, and 9:00 am, Thursday, April 24, 2014. Each site visit will begin at the Sonoma County Water Agency Administration Building (404 Aviation Blvd, Santa Rosa CA) and will conclude at the SVCSD Wastewater Treatment Facility (22675 8th Street East, Sonoma CA) at approximately 12:30 pm. Proposers will be escorted by Water Agency staff, however proposers need to bring their own vehicles to follow Water Agency vehicles. Site visits are not mandatory, but are recommended.

Technical Requirements

Codes and Standards

This Project falls under the expanded definition of "public works" project established under California Labor Code section 1720.6 and prevailing wages apply.

All work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshall, Safety Orders of the Division of Industrial Safety, International Standards for Organization (ISO) codes, California Building Code, California Mechanical Code, Title 24, National Electrical Code, and other applicable laws or regulations.

Burying conduits or trenching in the pond embankments must meet requirements of California Department of Water Resources, Division of Safety of Dams and may be subject to their review and written approval. Conduit on land shall be below grade where practicable.

Proposer shall design and construct the PV Systems to codes and in such manner as to ensure complete electrical safety for persons, equipment, and property during installation and under both normal and abnormal operating conditions.

The quality of the equipment and services supplied by Proposer shall be consistent with the applicable codes and standards including but not limited to those listed below. The most recent approved revision shall apply.

- National Electrical Code - NFPA 70
- UBC - Uniform Building Code
- All outdoor enclosures shall be minimum NEMA 3R, or equivalent rating
- Inverters shall be certified to UL 1741 or equivalent
- ANSI/IEEE 928 Recommended Criteria for Terrestrial PV Power Systems (PV System Performance criteria)
- ANSI/ASCE 7- Building code Requirements for Minimum Design Loads in Buildings and Other Structures
- ACI 318 with Commentary (ACI 318R) - Building Code Requirements for Reinforced Concrete
- IEEE 927 Recommended Practice for Utility Interface of PV Systems
- ANSI/IEEE Std 100
- ANSI/IEEE Std 1262, IEEE Recommended Practice for Qualification of Photovoltaic (PV) Modules
- ASTM Std E 892, Standard Tables for Terrestrial Solar Spectral Irradiance at Air Mass 1.5 for 37° Tilted Surface
- ASTM Std E 1328, Standard Terminology Relating to Photovoltaic Solar Energy Conversion
- IEEE Std C37.13, IEEE Standard for Low-Voltage AC Power Circuit Breakers Used in Enclosures
- IEEE Std C37.14, IEEE Standard for Low-Voltage DC Power Circuit Breakers Used in Enclosures (ANSI)
- IEEE Std C37.20.1, IEEE Standard for Metal-Enclosed Low-Voltage Power Circuit-Breaker Switchgear
- IEEE Std C37.20.2, IEEE Standard for Metal-Clad and Station-Type Cubicle Switchgear
- IEEE Std C37.20.2b, Supplement to IEEE Standard for Metal-Clad and Station-Type Cubicle Switchgear: Current Transformers Accuracies
- IEEE Std C37.20.3, IEEE Standard for Metal-Enclosed Interrupter Switchgear
- IEEE Std C57.12.01, IEEE Standard General Requirements for Dry-Type Distribution and Power Transformers Including Those with Solid Cast and/or Resin Encapsulated Windings

- IEEE Std C57.12.51, IEEE Standard for Ventilated Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase, with High-Voltage 601 V to 34 500 V; Low-Voltage 208Y/120 V to 4160 V- General Requirements
- IEEE Std C57.13, IEEE Standard Requirements for Instrument Transformers
- IEEE Std C57.13.1, IEEE Guide for Field Testing of Relaying Current Transformers (ANSI)
- IEEE Std C57.13.2, IEEE Standard Conformance Test Procedures for Instrument Transformers (ANSI)
- Certification of Proposer Supplied Equipment: All PV modules, inverters and electrical components shall be required to be listed or recognized by an appropriate and recognized United States Safety Laboratory (for example: UL, ETL, etc.).

Interconnection

Proposer shall provide all materials and equipment necessary to interconnect the PV System(s) with the public power utility's (PG&E) local transmission and/or distribution system in accordance with CAISO standards and PG&E's standards. Proposer shall fulfill all application, study, and testing procedures necessary to complete the interconnection process. Interconnection requirements to PG&E's transmission and distribution system can be found at

<http://www.pge.com/b2b/newgenerator/wholesalegeneratorinterconnection/index.shtml>.

PG&E has developed an interactive, Google-based map of its service territory at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/pvmap/>.

The map provides the location of selected electric transmission lines, distribution lines and associated substations within the PG&E service areas. In addition, the map also provides specific information, such as operating voltages, line capacity and substation names. Please note that the map is a tool to help Proposer, contractors, and developers identify potential project sites. The map is not a guarantee that generators can interconnect at any particular time and place. Several factors influence the ability and cost of interconnecting distributed generation systems to the electric system.

The PV System(s) shall be connected to the grid and shall not be connected to the Water Agency's power system(s). The PV System(s) shall be completely isolated from PG&E during maintenance and repair.

CEQA

The awarded Proposer will be responsible for preparing all necessary California Environmental Quality Act (CEQA) documentation. The Water Agency will assist the awarded Proposer in the preparation of the Initial Study/Environmental Checklist.

Energy Production

Based on the available surface area for mounting PV panels, propose an optimal PV system. Use the National Renewable Energy Laboratory (NREL) PVWattsTM calculator for comparison of energy production. Proposer may also present its own algorithm in addition to the NREL calculator. Note that it is Proposer's responsibility to confirm the available surface area by physical inspection, and using the facility plans and any other supporting material provided with this RFP.

Monitoring System

Proposer shall develop and provide a monitoring program that will allow Water Agency staff to monitor the performance of the PV system(s) in historical and real-time, for the life of the equipment.

Commissioning and Start-up Testing

During the start-up, the Water Agency, and/or its independent engineer/consultant, shall observe and verify each system performance. Required commissioning and acceptance test services include:

- Starting up the solar PV system(s) until it achieves the performance requirements
- Conducting the performance testing over a consecutive 24 hour period
- Conducting the successful delivery of power within 30 days following completion of the system

Warranties

Warranties against defective design, materials, workings, and latent defects for the time period specified for each warranty shall be provided, as well as all other warranties required or implied by law. Proposer shall fully define in its proposal the offered warranty which shall meet, at a minimum, the following requirements:

- Five year complete system warranty
- Ten year inverter and power transformers warranty
- 25 year PV panel operation and degradation warranty

Operation and Maintenance

Perform all required maintenance activities, including warranty repair work and equipment replacement including, but not limited to, inverter replacement in order to keep the system(s) operational.

PV System(s) Removal

The awarded Proposer shall bear the sole responsibility of removing the PV system(s) at the end of the 20 year service term should the Water Agency, in its sole discretion, opt not to acquire the PV system(s).

Submittal of Proposals

Please review the RFP and attachments before submitting a proposal. If any significant omissions or ambiguities come to the Water Agency's attention while the RFP is under review by interested firms, the Water Agency will make a uniform written response to all parties.

Proposals shall include the following:

1. A Table of Contents and page numbers.
2. A work program and timetable.

3. A statement of similar work previously performed, including at least three references with name of organization, contact person, and telephone number.
4. A statement of qualifications and a list of personnel to be assigned to the work, including a resume for each, listing education, experience, and expertise in this type of work.
5. A list of persons or firms to whom any phase of the work may be subcontracted, including a statement of their qualifications and experience.
6. Any proposed exceptions to the indemnification, insurance, or other terms of the PPA or Lease. Please make comments as specific as possible. If no exceptions are included in the proposal the standard terms will be considered acceptable and will not be renegotiated prior to execution.
7. Pricing sheets (included as Exhibit D)
8. PV Systems description
9. Description of mounting system
10. Equipment details and description layout of installation site(s)
11. Selection of key equipment
12. Specifications for equipment procurement and facility installation
13. Performance data sheets of equipment components, subsystem, and project, including PV and inverter manufacturer, model, and quantities
14. Electrical system interconnection requirement with the public power utility's (PG&E) transmission and/or distribution system
15. Controls, monitoring equipment, and instrumentation
16. Performance monitoring

Interested firms should submit one electronic copy of their proposal by 5:00 pm, Tuesday, May 13, 2014. Mail to the attention of Rebecca Simonson, Sonoma County Water Agency, hand deliver to 404 Aviation Boulevard, Santa Rosa, California 95403-9019, or email to rebecca.simonson@scwa.ca.gov.

Selection Procedure

Proposals that do not include all of the information requested cannot be adequately evaluated. Selection will be based on responsiveness to the work requirements, professional qualifications and overall performance commitment, demonstrated ability to perform the work in accordance with good practices common to the industry, time required, acceptance of standard contract terms, PV System and monitoring system description including typical useful life, total estimated power production, total cost per MWh and spatial requirements.

A 5% weighting will be provided in the total rating score for local firms. A Local Service Provider (local firm) is defined as a business or consultant who has a valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day-basis, and holds a valid business license if required by a city within the jurisdiction of Sonoma County. A business shall affirm it qualifies as a local business on a declaration form (attached as Exhibit E). The Water Agency also encourages the utilization of local financing partners.

Following the evaluation of written proposals, the Water Agency, at its sole discretion, may select proposers to be invited to an interview. Interviews will consist of questions directed to each Proposer to clarify Proposer's proposal as necessary. The evaluation committee may use this additional information to revise the score of the proposals. Proposer shall be prepared to make a presentation to the evaluation committee.

The issuance of this RFP does not constitute a promise by the Water Agency that any contract will actually be entered into by the Water Agency as a result of the RFP. The Water Agency expressly reserves the right at any time to:

- Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- Ask additional and follow up questions of any firm submitting a proposal;
- Reject any or all proposals;
- Determine that more than a single vendor is necessary to meet needs;
- Reissue a RFP;
- Prior to the submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals; or
- Procure any materials, equipment or services specified in this RFP by any other means, or determine that no project will be pursued.

All proposals submitted in response to this request shall be deemed public records. In the event that a Proposer desires to claim portions of its proposal exempt from disclosure, it is incumbent upon the Proposer to clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page. The Water Agency will consider a Proposer's request for exemption from disclosure; however, the Water Agency will make a decision based upon applicable laws. Assertions by a Proposer that the entire proposal or large portions are exempt from disclosure will not be honored. All responses to this Request for Proposals shall become the property of the Water Agency and will be retained or disposed of accordingly.

The Water Agency shall not be liable for any pre-contractual expenses incurred by any Proposer. The Water Agency shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

All data and information furnished by Water Agency or referred to in this RFP are furnished for the Proposer's convenience. The Water Agency does not guarantee that such data and information are accurate and assumes no responsibility whatsoever as to its accuracy or interpretation. Proposers shall satisfy themselves as to the accuracy or interpretation of all such information and data.

By submitting a proposal in response to this RFP, the Proposer waives all rights to seek any legal remedies regarding any aspect of this RFP, the Water Agency's selection of a proposer, and the Water Agency's rejection of any and all proposals.

The Water Agency also reserves the right to negotiate any price or provisions and accept any part, or all parts of any or all proposals, whichever is in the best interest of the Water Agency.

Contacts

Proposers must direct all questions about the meaning or intent of the RFP to Water Agency in writing. Inquiries must include the full name of the Project. Water Agency may not answer questions received less than fourteen calendar days prior to the date for proposal submission due date. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. If you have any questions please contact Rebecca Simonson at Rebecca.Simonson@scwa.ca.gov.

Sincerely,

James Jasperse, P. E.
Chief Engineer

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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“Agreement”) is entered into as of _____ (the “Effective Date”), between _____ (“Seller”) and the Sonoma County Water Agency (“Buyer”) (each also referred to as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate the [*type of facility*] to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of [] MW AC (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and all Capacity Attributes;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit F.

“**Agreement**” has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, any designated collateral, credit support or similar arrangement between the Parties.

“**Available Capacity**” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Bid Curtailment” means the occurrence of all of the following:

- (a) the CAISO provides notice to a Party or Buyer’s SC, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;
- (b) for the same time period as referenced in (a), Buyer or Buyer’s SC:
 - (i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or
 - (ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or
 - (iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and
- (c) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period.

“Buyout Payment” has the meaning set forth in Exhibit G.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Facility has been constructed, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” has the meaning set forth in Exhibit B.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“Confidential Information” has the meaning set forth in Section 19.1.

“Contract Price” has the meaning set forth in Section 3.3.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means each calendar year during the Contract Term, commencing on the Commercial Operation Date, *provided* that if the first (1st) and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Contract Term.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to [**50 hours times Installed Capacity.**]

“Curtailment Order” means any of the following:

- a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;
- b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;
- c) a curtailment ordered by the CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

d) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Day-Ahead Forecast" has the meaning set forth in Section 4.4(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Delivered Energy" means all Energy produced from the Facility as measured in MWh at the CAISO revenue meter of the Facility based on a power factor of precisely one (1) and net of all Electrical Losses.

"Delivery Point" means the [*Facility PNode*] [*NP15 Trading Hub as defined by the CAISO [TH_NP15_GEN-APND]*].

"Delivery Term" shall mean the period of [_____] Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"Development Cure Period" has the meaning set forth in Exhibit B.

"Development Security" means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody's, in the amount equal to [*\$60/kW for as-available; \$90/kW for dispatchable*].

“Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

“Early Termination Date” has the meaning set forth in Section 11.2.

“Effective Date” has the meaning set forth on the Preamble.

“Eligible Intermittent Resource Protocol” or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

“Energy” means metered electrical energy, measured in MWh, which is produced by the Facility.

“Event of Default” means either a Seller Default or Buyer Default as specified in Article 11.

“Expected Energy” has the meaning set forth in Exhibit F, Schedule F-1.

“Facility” means the facility described more fully in Exhibit A attached hereto.

“Fair Market Value” has the meaning set forth in Exhibit G.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag

represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS operating rules.

“Guaranteed Capacity” means [____ ()] MW AC capacity measured at [*Insert location.*].

“Guaranteed Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth in Exhibit B.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guarantor” means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of [____] or better from S&P or a Credit Rating of [____] or better from Moody’s, (d) has a tangible net worth of at least [____], (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer in a form reasonably acceptable to Buyer. *[Buyer will consider accepting a Guaranty based on the Facility, the amount of Performance Security, and the identity of the Seller and Guarantor.]*

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer in a form reasonably acceptable to Buyer. *[Buyer will consider accepting a Guaranty based on the Facility, the amount of Performance Security, and the identity of the Seller and Guarantor.]*

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 17.1.

“Indemnifying Party” has the meaning set forth in Section 17.1.

“Installed Capacity” means the sum of the actual generating capacity of the Facility, not to exceed [*generating capacity expressed in MW AC*].

“Inter-SC Trade” has the meaning set forth in CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Law” means any applicable law, statute, regulation, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form reasonably acceptable to Buyer.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

“**Lost Output**” has the meaning set forth in Exhibit F.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth in Exhibit H.

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour.

“**Negative Imbalance Energy**” has the meaning set forth in Section 3.4.

“**Negative LMP**” means, in any Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

“**Negative LMP Costs**” has the meaning set forth in Section 3.3(c).

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“**Output Event of Default**” has the meaning set forth in Exhibit F.

“**Participating Intermittent Resource Protocol**” or “**PIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is _____.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” has the meaning set forth in Section 4.7.

“Performance Security” means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, in an amount and form acceptable to Buyer.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“PNode” has the meaning set forth in the CAISO Tariff.

“Positive Imbalance Energy” has the meaning set forth in Section 3.4.

“Product” means (i) Energy, (ii) Green Attributes and (iii) Capacity Attributes.

“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 1)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 2)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 3)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Schedule” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Seller” has the meaning set forth on the Cover Sheet.

“Settlement Amount” means the non-defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the non-defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the non-defaulting Party. If the non-defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Termination Payment” has the meaning set forth in Section 11.3.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“WECC” means the Western Electricity Coordinating Council or its successor.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person’s successors and permitted assigns;
- (g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;
- (k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2: TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(b) Buyer shall have the right, but not the obligation, to extend the Contract Term for an additional five (5) Contract Years at the then-current Contract Price, but Seller must receive written Notice of such extension at least two (2) years before the end of the initial Contract Term.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(d) Buyer may elect to purchase the Facility during the Delivery Term in accordance with Exhibit E.

2.2 Conditions Precedent. Subject to Section 3.6, Buyer shall have no obligation whatsoever to purchase the Product from the Facility under this Agreement until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) All Facility systems necessary for continuous operation and metering have been installed and are tested and certified;

(b) All applicable agreements between Seller and CAISO required for the performance of Seller's obligations under this Agreement have been executed, delivered and shall remain in full force and effect, including a Participating Generator Agreement, a Meter Service Agreement, and a Scheduling Coordinator Agreement and a copy of each agreement delivered to Buyer;

- (c) All applicable agreements between Seller and the PTO, including an Interconnection Agreement, have been executed, delivered and shall remain in full force and effect and a copy of each agreement delivered to Buyer;
- (d) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;
- (e) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility have been obtained and all conditions thereof completed and shall remain in full force and effect;
- (f) Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for the Facility have been completed;
- (g) Seller has received documentation from the CAISO that the Facility has received a Full Capacity Deliverability Status Finding.
- (h) Seller has received the requisite pre-certification of the CEC Certification and Verification (and will reasonably expect to receive in no more than ninety (90) days from the Commercial Operation Date the final CEC Certification and Verification) for the Facility;
- (i) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements; and
- (j) Seller successfully completes an initial Facility performance test, using industry accepted testing procedures, which demonstrates peak facility electrical output of no less than ninety percent (90%) of the Installed Capacity, as adjusted for ambient conditions, on the date of the performance test, which shall not be less than [] MW. Seller has delivered to Buyer a certification of a licensed professional engineer certifying that ninety percent (90%) of the Installed Capacity is capable of generating energy in accordance with the manufacturer's specifications.
- (k) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

(l) Seller has entered into a lease for the site upon which the Facility is to be located, has provided all of the financial assurances required under the lease, and has met all conditions precedent in the lease.

2.3 **Progress Reports**. Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit H.

ARTICLE 3: PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by the Facility.

3.3 **Compensation**.

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Delivered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead price for the each Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the applicable Contract Price.

(e) If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event, or (ii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller, as Seller's sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period.

3.4 **Imbalance Energy**. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "**Positive Imbalance Energy**;" when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "**Negative Imbalance Energy**." Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred.

(a) **Positive Imbalance Energy (Over Deliveries)**. In the event that Delivered Energy for any CAISO Settlement Interval is equal to or greater than Scheduled Energy for such CAISO Settlement Interval, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such CAISO Settlement Interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO in respect of the Positive Imbalance Energy.

(b) **Negative Imbalance Energy (Under Deliveries)**. In the event that Delivered Energy for any CAISO settlement interval is less than Scheduled Energy for such CAISO Settlement Interval, Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall be responsible for all payments owing to the CAISO in respect of the Negative Imbalance Energy.

3.5 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation for such Test Energy, Buyer shall pass through to Seller any CAISO revenues for such Test Energy, net of any CAISO fees and Scheduling Coordinator service costs.

3.8 **Capacity Attributes.** By no later than [*date*], Seller shall have performed, or caused to be performed, all necessary CAISO interconnection studies. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

3.9 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Seventh Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.11 **California Renewables Portfolio Standard.** Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

ARTICLE 4: OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy after its receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with the Facility or Seller's violation of applicable regulatory requirements. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) **Green Attributes.** Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes

from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and receive the Product at the Delivery Point. Throughout the Delivery Term, Buyer and Seller shall submit inter-SC trades for scheduling all Product from the Facility at the Delivery Point (including Energy, Integrated Forward Market Load Uplift Obligations in respect of self-scheduled Energy, and other Product from time to time contemplated under the CAISO Tariff to be subject to inter-SC trades), based on a final Schedule developed in compliance with this Agreement. During the Delivery Term, each Party or each Party's SC shall conduct all scheduling in accordance with the operating procedures developed by the Parties pursuant to this Agreement and in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Whenever PIRP is applicable, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP. It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Facility through this Agreement and CAISO settlement process and that the more detailed scheduling and operating procedures developed pursuant to this Agreement complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.

(b) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Facility, in each case, associated with Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of the Facility not being

available, the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), any other failure by Seller to abide by the CAISO Tariff, and any other deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Facility, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of the sanctions or penalties shall be the Seller's responsibility.

4.4 **Forecasting.** Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Available Capacity.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) **Monthly Forecast of Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) **Daily Forecast of Available Capacity.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to

such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) **Hourly and Sub-Hourly Forecasts of Available Capacity.** Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

4.5 **Dispatch Down/Curtailment**

(a) **General.** Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Contract Price.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon notice of a Curtailment Order pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Expected Energy and Guaranteed Energy Production**. The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 (“**Expected Energy**”). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for such period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods, and Buyer Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F.

ARTICLE 5: TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall

promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6: MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall comply with applicable Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit F Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

ARTICLE 7: METERING

7.1 Metering. Seller shall measure the amount of Energy produced at the Facility using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8: INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the CAISO revenue grade meter, the Contract Price applicable to such Product, deviations between the quantity of Product produced and the quantity of Product delivered, and the CAISO prices at the Delivery Point for each Settlement Interval; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by applicable Law. Upon fifteen (15) days written Notice to Seller, Buyer shall

be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount of *[\$60/kW for as-available; \$90/kW for dispatchable]* within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and if Buyer collects or

is entitled to collect Daily Delay Damages from Seller for Seller's failure to achieve the Guaranteed Construction Start Date, Seller shall replenish the Development Security by an amount equal to the encumbered Development Security. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B. If the Development Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the amount of [*Buyer to determine amount following credit review*]. If the Performance Security is not in the form of cash, it shall be in a form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

ARTICLE 9: NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

- (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;
- (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such

fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party.

Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10: FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iii) a Curtailment Period; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other

resources to build or operate the Facility; (v) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive eight (8) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(c).

ARTICLE 11: DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 of this Agreement;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit

and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 11.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that

any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12: LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST

PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS

AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13: REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of [state], and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) [*Select the applicable representations:*]

(f) [The Facility is located in the State of California].

[The Facility has [firm transmission rights] to a first point of interconnection with a California balancing authority, has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area or are scheduled from the eligible or are scheduled from the

Eligible Renewable Energy Resource into a California balancing authority without substituting electricity from another source].

[The Facility has an agreement to dynamically transfer electricity to a California balancing authority.]

[The Facility generates firmed and shaped Eligible Renewable Energy Resource electricity products providing incremental electricity and scheduled into a California balancing authority].

[The Facility generates Eligible Renewable Energy Resource electricity products (or a fraction of the electricity generated, including unbundled renewable energy credits) that do not qualify under the criteria of Section 399.16(b)(1) or (2) of the California Public Utilities Code.]

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a California public agency, duly organized, validly existing and in good standing under the laws of the State of California.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any applicable Law.

ARTICLE 14: ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide

payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3 **Assignment by Buyer to Sonoma Clean Power Authority.** Buyer may assign its interests in this Agreement to the Sonoma Clean Power Authority, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Sonoma Clean Power Authority stating that (i) it agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) it has the financial capability to perform all of Buyer's obligations under this Agreement. Any assignment by Buyer under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15: LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Article 14, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably

requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

ARTICLE 16: DISPUTE RESOLUTION

16.1 **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of inhouse counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17: INDEMNIFICATION

17.1 Indemnification.

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its directors, officers, employees and agents from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, its directors, officers, employees, or agents, whether or not there is concurrent negligence on Buyer's, but to the extent required by law, excluding liability due to Buyer's conduct.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole active negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by Buyer of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, Buyer shall notify Seller in writing of such fact. Seller shall assume the defense thereof with counsel designated by Seller and satisfactory to Buyer, *provided, however*, that if the defendants in any such action include both the Buyer and the Seller, and Buyer shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to Seller, then Buyer shall have the right to select and be represented by separate counsel, at Seller's expense, unless a liability insurer is willing to pay such costs. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of Seller contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Seller or, absent such consent, written opinion of Buyer's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that Seller is obligated to indemnify and hold Buyer and its successors and assigns harmless under this Article 17, the amount owing to Buyer will be the amount of the Buyer's damages net of any insurance proceeds received by the Buyer following a reasonable effort by the Buyer to obtain such insurance proceeds.

ARTICLE 18: INSURANCE

18.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence, and an annual aggregate of not less

than two million dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semitrailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior written Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any

insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19: CONFIDENTIAL INFORMATION

19.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality.**

(a) Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

(b) Seller acknowledges and agrees that Buyer is subject to the requirements of the California Public Records Act, and that Buyer may be required to produce documents containing Confidential Information in response to requests made under that Act. Notwithstanding anything in this Article 19 to the contrary, the production of documents by Buyer under the California Public Records Act shall not constitute a violation of Buyer's duty to maintain confidential information.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

ARTICLE 20: MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement,

Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

20.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **No Recourse to Members of Sonoma Clean Power Authority**. In the event of an assignment by Buyer of this Agreement to the Sonoma Clean Power Authority, Seller acknowledges and agrees that (1) the Authority is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members, (2) the Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this

Agreement, and (3) Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name:

APN:

County:

MW AC:

P-node/Delivery Point:

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

a. Seller shall cause construction to begin on the Facility by **[Date]**, (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Construction Start Date**”). The beginning of construction shall be the execution of Seller’s engineering, procurement and construction contract, Seller’s issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Facility.

b. If construction does not begin on the Facility by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which construction has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller commences construction of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B.

c. Seller shall pay prevailing wages in connection with the construction of the Facility in accordance with California Labor Code section 1720.6.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) all necessary permits have been obtained and all conditions to operate the Facility have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) the Seller receives final permission to parallel from the PTO, (iii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer, (iv) Full Capacity Deliverability Status has been assigned by the CAISO, and (v) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement; and (vi) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) **[Date]** or (y) the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation for the Facility to occur by **[Date]** (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon written Notice to Seller.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:

a. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product are not received by **[Date]**;

b. a Force Majeure Event occurs;

c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by **[Date]**; or

d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date;

provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred twenty (120) days ("**Development Cure Period**").

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operations Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
CONTRACT PRICE

The Contract Price of the Product shall be:

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Cordel Stillman
Sonoma County Water Agency
404 Aviation Boulevard
Santa Rosa, CA 95403

SELLER:

[Name]

[Title]

[Seller]

[Address]

Fax No: [_____]

Phone No: [_____]

Email: [_____]

EXHIBIT E
BUYOUT PRICE

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production, during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$(A - B) * (C - D)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh.

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh.

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) \$50/MWh.

D = the Contract Price for the Performance Measurement Period, in \$/MWh.

“**Adjusted Energy Production**” shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

“**Lost Output**” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

SCHEDULE F-1

EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

EXHIBIT G

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term and (iii) the twentieth (20th) Contract Year of the Contract Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of the Facility as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers.

(3) Passage of Title. Upon receipt of the Buyout Payment, (a) Seller shall surrender and transfer to Buyer all of Seller’s right, title and interest in and to the System (including all warranties) and shall retain all liabilities arising from or related to the System prior to the Transfer Date, and (b) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Buyer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System to Buyer.

EXHIBIT H

QUARTERLY MILESTONE PROGRESS REPORTING FORM

Seller shall prepare a written report (this “**Quarterly Milestone Progress Reporting Form**”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing and start-up of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones.
9. List of issues that could potentially impact Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

PHOTOVOLTAIC ENERGY FACILITY LEASE AGREEMENT

THIS PHOTOVOLTAIC ENERGY FACILITY LEASE AGREEMENT ("**Lease**") is made and entered into this ____ day of ____, 2014 (the "**Effective Date**"), by and between **SONOMA COUNTY WATER AGENCY**, a body corporate and politic of the State of California, with a mailing address of 404 Aviation Blvd., Santa Rosa, California 95403 (the "**Landlord**"), and **[NAME OF CONTRACTOR]**, with a mailing address of _____ ("**Tenant**"). Landlord and Tenant are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

A. Landlord is the owner of certain real property in the County of Sonoma, State of California, commonly known as APNs ____ which together with all buildings, fixtures, and improvements located thereon, is legally described on the attached **Exhibit A** (the "**Premises**");

B. The Water Agency has entered into a Power Purchase Agreement (the "**PPA**") concurrently herewith, whereby, among other things, Tenant will sell to Landlord all of the energy output generated by a photovoltaic generation facilities (the "**System**") in accordance with the term and conditions of the PPA; and

C. Landlord and Tenant desire to enter into a lease under which Landlord will lease Tenant a portion of the Premises described in Exhibit B (the "**Lease Site**") on which Tenant will construct and operate the System for the delivery of electricity, in accordance with the following terms, covenants, and conditions.

AGREEMENT

In consideration of the Recitals and of the mutual covenants, terms and conditions set forth below, the Parties agree as follows:

Section 1. Lease.

Landlord hereby demises and leases to Tenant and Tenant hereby takes, accepts, and leases from Landlord, the Lease Site for exclusive use by Tenant for the purpose of developing, constructing, owning and operating the System within the bounds of the Lease Site described in **Exhibit B**, attached hereto and by the reference made a part of this Agreement.

Section 2. Term.

(a) Unless otherwise terminated as set forth herein, the term of this Lease shall commence and become effective upon execution, and shall be in effect until the Twenty-Second (22nd) anniversary of the Effective Date, as defined in the PPA (the "**Term**").

(b) Notwithstanding the foregoing, (i) in the event that on or before [date] the Tenant has failed to obtain all necessary permits and approvals of the County of Sonoma for construction and

operation of the System on the Lease Site, or (ii) if the PPA is terminated due to the non-occurrence of any condition precedent as provided in Article II of the PPA, then this Lease shall terminate automatically.

Section 3. Rent.

As and for annual rent for the Lease Site, Tenant agrees as follows:

(a) To pay to Landlord as and for annual rent for the Lease Site the sum of [\$800 per acre]. Rent shall be due beginning [date]. The Rent amount will be increased annually in an amount equal to the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-San Jose. Rent shall be payable at Landlord's address given below or at such other place as Landlord may, from time to time, designate in writing.

Section 4. Use of Lease Site by Tenant.

Landlord agrees to permit Tenant, its employees, service providers, vendors, subcontractors and designees to perform and conduct all activities necessary to construct, maintain, operate, repair and replace the System on the Lease Site; to deliver electricity other deliverables to third parties; to make any and all interconnections required for the System and the Lease Site; and otherwise to do any activities Tenant deems necessary or desirable for the successful construction and operation of the System (the "*Operations*") under the terms set forth in this Lease.

Section 5. Exclusive Use.

5.1 Tenant shall have the sole and exclusive right to operate the System, or any similar operation, on the Lease Site. Landlord shall not grant any rights in the Premises purporting to permit others to conduct operations similar to or in competition with the System on the Lease Site in derogation of Tenant's sole and exclusive right to conduct the Operations on the Lease Site. If the Landlord acquires the System pursuant to the exercise of its purchase option under the PPA, Landlord may operate the System on the Premises, notwithstanding anything in this Section 5 to the contrary.

Section 6. Warranties of Title and Protective Covenants.

6.1 Interference. During the Term of this Lease, Landlord covenants and agrees that neither it nor Landlord's Agents (as defined below) will (i) materially interfere with or prohibit the free and complete use and enjoyment by Tenant of its rights granted by this Lease; (ii) take any action or permit any condition to exist on the Premises, including the Lease Site, which will materially interfere with the operation of the System; or (iii) take any action which will materially impair Tenant's access to the Premises or the Lease Site for the purposes specified in this Lease.

6.2 Quiet Enjoyment. As long as Tenant observes the terms and conditions of this Lease, Landlord warrants that Tenant shall peaceably hold and enjoy the Lease Site, and any and all other rights granted by this Lease for its entire Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord except as expressly provided in this Lease.

6.3 Reservation. Notwithstanding anything in Sections 4, 5, or 6 to the contrary, Tenant understands and agrees that the System will be located on and adjacent to wastewater holding ponds, and the Landlord uses such ponds and adjacent property to operate a wastewater treatment facility, and that Landlord shall have the right, at its sole cost and expense, to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections; water, oil and gas pipelines; and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient to use in connection therewith, over, in, upon, through, across and along the Lease Site or any part thereof, as will not materially interfere with Tenant's Operations hereunder and to enter thereupon for any and all such purposes. Landlord also reserves the right to grant franchises, easements, rights-of-way and permits in, over, and upon, along or across any and all portions of said Lease Site as Landlord may elect as will not interfere with Tenant's Operations hereunder and to enter thereupon for any and all such purposes. In addition, Landlord reserves the right to enter and have access to the Lease Site in order to make, construct or carry out improvements as will not materially interfere with Tenant's Operations hereunder and to enter thereupon for any and all such purposes, and so long as Landlord restores, at its sole cost and expense, the condition of the Lease Site and any structures and improvements thereon to their original condition. Landlord agrees that any right set forth in this Section 6.3 that may affect the System or the operation of the System shall not be exercised unless a prior written notice of thirty (30) days is given to Tenant. However, if such right must be exercised by reason of emergency, Landlord will give such notice in writing as is possible under the existing circumstances. Landlord shall exercise its best efforts to avoid unreasonable interference with Tenant's operations or enjoyment of the Lease Site or impairment of the security of any Mortgagee in its exercise of rights pursuant to this Section.

6.4 Warranty of Title to Lands. Landlord hereby warrants with respect to the Premises, including the Lease Site, that (1) Landlord has good and marketable fee simple title to the Premises, (2) Landlord, previous to the time of execution of this Lease, has not leased the Premises, or any part thereof, under any lease or other instrument that is currently effective, (3) the leasehold estate created hereby with respect to the Lease Site is free from encumbrances done, made, or suffered by Landlord, or any person claiming under Landlord, except for such encumbrances that are of record. Tenant and Mortgagee (as defined in Section 19.1) may obtain a current preliminary title report for the Premises at its expense showing all liens and other exceptions to title to the Premises, including the Lease Site. Furthermore, Tenant and any Mortgagee may obtain a leasehold title policy for the Premises at their own expense insuring the leasehold estate. Landlord shall cooperate with Tenant to obtain a nondisturbance agreement from any lienholder (recorded or unrecorded) which provides that the lienholder shall not disturb Tenant's possession or rights under this Lease or terminate this Lease so long as Landlord is not entitled to terminate this Lease under its terms.

6.5 Observance of Laws and Covenants. Tenant shall use the Lease Site granted by this Lease only for the purposes stated herein and shall conduct all of its Operations on the Premises and the Lease Site in a lawful manner after obtaining all necessary permits and government approvals pursuant to Section 10. Tenant will carry out and implement, at its own expense, all mitigation measures set forth in the environmental document prepared under CEQA, and any other terms and conditions of approval imposed by any government regulatory agency, including the County of Sonoma, relating to the construction or operation of the System. Tenant will carry out its responsibilities and exercise any rights which it possesses under this Lease in a manner which is consistent with all applicable laws, rules, ordinances, orders and regulations of governmental agencies at its own expenses. Landlord shall

reasonably cooperate and participate, as needed, with the acquisition of the permits and governmental approvals.

6.6 Condition of Premises. Tenant hereby acknowledges that, except as may be expressly set forth elsewhere in this Lease, neither the Landlord nor anyone acting for or on behalf of the Landlord, has made any representation, warranty or promise to Tenant concerning the physical aspects or condition of any portion or part of the Premises or the Lease Site or improvements, the feasibility, desirability or convertibility of the Premises or the Lease Site into any particular use, the conditions of the soil, subsoils, ground water, or surface waters or the presence or absence of any toxic waste or hazardous substances or material, and that by entering into this Lease Tenant has not relied on any representation, statement or warranty of the Landlord, or anyone acting for or on behalf of the Landlord, and that all matters concerning the Premises and the Lease Site shall be independently verified by Tenant, and that Tenant shall lease the Lease Site on Tenant's own examination thereof, AND THAT TENANT IS LEASING THE LEASE SITE IN "AS IS" PHYSICAL CONDITION AND "AS IS" STATE OF REPAIR. Tenant does hereby waive, with respect to conditions existing as of the Effective Date of this Lease, whether known or unknown, and the Landlord does hereby disclaim all warranties of any type or kind of description, with respect to conditions existing as of the Effective Date of this Lease, including, without limitation, those of fitness for particular purpose, tenantability, habitability and use. Tenant hereby expressly assumes the risk that adverse physical conditions existing as of the date of this Lease and the full extent thereof, may not be revealed by Tenant's inspections, reviews and studies of the Premises and Lease Site. It is an expressly bargained-for agreement herein that Tenant shall be responsible, at Tenant's sole cost and expense, for causing the improvements constructed by Tenant on the Premises and the Lease Site to comply in all respects with all applicable federal, state or local laws, rules, ordinances, policies and guidelines, whether presently existing or enacted in the future.

Section 7. Taxes.

Tenant is fully responsible for and agrees to pay, all real and personal property taxes (including any tax levied on a possessory interest, as defined in California Revenue and Taxation Code Section 107 or successor statute, if applicable), general and special assessments, and other charges of every description (collectively "Taxes"), levied on or assessed against the Lease Site, the System, personal property located on or in the land or improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the Term. Tenant shall make all such payments directly to the assessing authority, at least ten (10) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any, or all, of the above items, in installments (whether or not interest accrues on the unpaid balance), Tenant may, at Tenant's election, utilize the permitted installment method, but shall pay each installment, with any interest, before delinquency. To the extent applicable, Landlord shall pay all real estate taxes and all special assessments which may become due and payable or become a lien on the Premises, other than those payable by Tenant described above.

Section 8. Utilities, Maintenance and Expenses.

8.1 Operation; Compliance with Laws and Conditions of Use Permit. Throughout the term, Tenant shall, at Tenant's sole cost and expense, maintain the Lease Site and all improvements,

including the System, in good condition and repair, and in accordance with (a) all applicable federal, state and local laws, rules, ordinances, orders, regulations and other requirements; (b) all of the terms and conditions of any use permit or building permit issued by the County of Sonoma Permit and Resource Management Department ("PRMD"); and (c) the requirements of all applicable insurance policies. It is the intent of the Parties that Tenant shall be responsible for the repair and restoration of the Lease Site, and any part thereof, in the event of any casualty, injury, damage, or destruction to the Lease Site any part thereof, regardless of when it occurs during the Lease term. No damages, compensation or claim shall be payable by Landlord for any inconvenience, any interruption or cessation of Tenant's business, or any annoyance, arising from any damage to or any destruction of all or any portion of the Lease Site, except and excluding any damage or any destruction caused by the active negligence or willful misconduct of Landlord, its officers, agents, employees or representatives. Tenant shall not receive any abatement in or reduction of rent as a result of any damage or destruction to the Lease Site or any loss of use of the Premises or Lease Site (or any part thereof) as a result thereof; provided, however, Tenant shall be entitled to a proportional abatement and reduction in rent during the entire period of any loss of use and/or enjoyment of the Lease Site caused by the active negligence or willful misconduct of Landlord, its officers, agents, employees, or representatives. It is the specific, bargained-for intent of the Parties hereto that Tenant's maintenance and repair obligations shall be absolute and total, except for any maintenance or repair work necessitated by the active negligence or willful misconduct of Landlord, its agents, employees, or representatives, and that Landlord shall have no obligation or responsibility for such work, and that this provision has been specifically negotiated by the Parties and the rent payable by Tenant reflects this negotiation. Any casualty, injury, damage, or destruction to the Premises or any part thereof caused by Tenant or Tenant's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, shall be promptly repaired by Tenant at Tenant's sole cost and expense, to the satisfaction of Landlord, except to the extent caused by the active negligence or willful misconduct of Landlord, its officers, agents, employees, or representatives. Landlord may (but shall not be obligated to) make any repairs which are not made by Tenant within a reasonable amount of time (except in the case of emergency when such repairs can be made immediately), and charge Tenant for the actual reasonable cost of such repairs as additional rent. Tenant shall be solely responsible for the design and function of all improvements constructed on the Lease Site by Tenant. Landlord shall not be responsible for furnishing any utilities or services to the Lease Site or the Premises. Tenant shall pay all utility services required for the Lease Site, including gas, electricity, water and sewer. Tenant will not use or occupy the Lease Site for any unlawful purpose.

Section 9. Access and Use.

Landlord expressly grants Tenant, its designees and subcontractors the following rights with respect to the Lease Site and Premises:

- (i) To move excavation and construction vehicles, equipment and supplies, as Tenant may deem necessary or desirable, during the construction phase or for any required maintenance of the System, through the Premises and through easements approved in writing by Landlord (which approval shall not be unreasonable withheld, conditioned or delayed) through any surrounding or adjacent property owned or leased by Landlord to and from the Lease Site;

- (ii) To use certain areas of the Premises for laydown, construction staging, and operations and maintenance, as may be required during construction of the System and during operation from time to time, through easements approved in writing by the Landlord, which approval shall not be unreasonably withheld, conditioned or delayed;
- (iii) To construct and maintain electricity lines and all other utilities (above or below ground) through the Premises and any surrounding or adjacent property owned or leased by Landlord to and from the Lease Site required for the operation of the System at locations and through easements approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and
- (iv) To access the Lease Site through the Premises and any surrounding or adjacent property owned or leased by Landlord at any time during the Term for maintenance of the System, through easements approved in writing by the Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

Notwithstanding anything in this Section 9 to the contrary, Landlord shall not be required to approve any easements through or allow Tenant to use the Premises or any other property owned or leased by Landlord if such easements or use will, in Landlord's reasonable judgment, interfere with Landlord's operations on such property or make such operations more expensive.

Section 10. Permits and Governmental Approvals.

Tenant shall be solely responsible for obtaining, at its sole cost and expense, from any governmental agency or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with the Lease Site or the construction, use, or operation of the System, and shall solely own such permits and approvals unless forbidden by permitting authorities; and Landlord shall promptly upon request, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument (including any variance, encroachment agreement or setback waiver approved by the County Permit and Resource Management Department) that is reasonably requested by Tenant in connection therewith. Such documents shall be in the form, if any, required by state or local government(s). Landlord shall reasonably cooperate with Tenant as necessary to obtain any governmental approvals, at no cost or expense to Landlord, provided that Tenant shall reimburse Landlord for its reasonable out-of-pocket expense directly incurred in connection with such cooperation. Nothing in this Section 10, however, shall impair or limit Landlord's discretion with respect to Landlord's own compliance with the California Environmental Quality Act.

Section 11. Construction of System.

11.1 Prior to submitting plans to the County's Permit and Resource Management Department for the construction of any of the System, Tenant shall deliver to Landlord two (2) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in California. Such preliminary construction plans and specifications shall include, where necessary, without limitation, preliminary grading and drainage plans, soil tests, utilities, sewer service connections, locations of ingress and egress to and from public thoroughfares, driveways, parking areas, street lighting, designs and locations for outdoor signs, storage areas and landscaping, and shall

be in sufficient detail to enable Landlord to make an informed judgment about the design and quality of construction. All improvements shall be constructed within Lease Site (subject to any setback requirements); provided that required work beyond the exterior property boundaries of the Lease Site on utilities, access, and landscaping do not violate this provision. Landlord shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be promptly communicated to Tenant. Tenant shall not deliver working drawings to any governmental body for a building permit, or design review, until preliminary plans are approved in accordance with this Section 11.1.

11.2 Once County's Building Division of the Permit and Resource Management Department has issued a building permit for any improvements, Tenant shall deliver to Landlord two (2) complete sets as approved by the governmental agencies, together with a schedule for construction of the improvements. The final working plans and specifications submitted to the Landlord shall clearly indicate all changes made from the preliminary plans and specifications previously approved. Changes from the preliminary plans shall be considered to be within the scope of the preliminary plans, if they are not substantial or if they are made to comply with suggestions, requests, or requirements of a governmental agency or official, in connection with the application for a permit or approval, and if they do not depart substantially in size, utility, location, or value from the approved preliminary plans. Landlord shall approve or disapprove of such plans within ten (10) business days of receipt of such final plans and specifications. In the event the Landlord disapproves of the final plans and specifications, such disapproval shall be accompanied by specification of the grounds for disapproval. Landlord shall not disapprove such final plans and specifications if they are within the scope of the approved preliminary plans and specifications as defined above.

11.3 Tenant shall notify Landlord of Tenant's intention to commence a work of improvement at least thirty (30) days before commencement of such work, or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Landlord shall have the right to inspect the Lease Site in relation to the construction, at all reasonable times. Tenant shall keep the Lease Site safe and shall take all reasonable measures to prevent harm, or injury, to persons entering on, or near, the construction site.

11.4 The construction contract shall give Landlord the right, but not the obligation, to assume Tenant's obligations and rights under that contract, if Tenant should default. Tenant's contract with the general contractor shall comply with all laws and regulations relating to construction of improvements upon public property, to the extent such laws and regulations are applicable to improvements constructed pursuant to this Lease, including, without limitation, prevailing wage regulations and anti-discrimination laws.

11.5 Tenant shall procure and deliver to Landlord, at Tenant's expense, evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including, without limitation, environmental approval, any required zoning or planning approval of the County of Sonoma, grading permit, building permit and any other approvals from governmental agencies or bodies having jurisdiction.

11.6 Tenant shall require all contractors performing work on the Lease Site to obtain, insurance as described in **Exhibit D**.

Section 12. Construction Liens.

12.1 Tenant shall pay, or caused to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics' Lien Law (commencing with California Civil Code §3109). No such payment shall be construed as rent. Tenant shall not suffer or permit to be enforced against the Premises, or any part of it, any recorded mechanic's, materialman's, contractor's or subcontractor's lien, arising from any work of improvement, however it may arise. However, Tenant may, in good faith, and at Tenant's own expense, contest the validity of any such asserted lien, claim, or demand, provided Tenant has furnished, within ten (10) days of recordation of such a lien, the bond required in Civil Code §3143 (or any comparable statute hereafter enacted for providing a bond freeing the premises from the effect of such a lien claim). Tenant shall defend and indemnify Landlord against all liability and loss of any type, arising out of work performed on the Premises by Tenant, together with reasonable attorney's fees and all costs and expenses incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such claims; provided, however, that Landlord shall not negotiate or settle any such liability or loss of any type without first securing in each instance the specific written consent of Tenant.

12.2 If Tenant does not cause to be recorded the bond described in California Civil Code §3143, or otherwise protect the Premises under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Tenant shall reimburse Landlord for all sums paid by Landlord under this Section 12.2, together with all Landlord's attorneys' fees and costs, plus interest on those sums, fees and costs.

Section 13. Insurance.

13.1 Duty to Maintain Insurance. Tenant shall obtain insurance as described below from an insurance company or companies with an A.M. Best Rating of B+VIII or better. The required documentation of insurance shall be furnished to Landlord upon the execution of this Lease.

13.1.1. General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than Two Million Dollars (\$2,000,000) limit for each occurrence and Two Million Dollars (\$2,000,000) each for the general aggregate and the products/completed operations aggregate. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

(1) "The Sonoma County Water Agency, and its officers and employees are named as additional insured for all liability arising out of the on-going and completed operations by or on behalf of the named insured in the performance of the Photovoltaic Energy Facility Lease Agreement between Water Agency and [_____]."

(2) "The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not

operate to increase the limits of the company's liability."

(3) "The insurance provided herein is primary and non-contributory coverage to the Sonoma County Water Agency with respect to any policy of insurance or self-insurance programs maintained by the Agency."

(4) "The insurer waives the right of subrogation against the Sonoma County Water Agency, and against its agents and representatives."

(5) "This policy shall not be canceled or materially changed without first giving the Sonoma County Water Agency thirty (30) days' prior written notice by certified mail."

13.1.2 Workers' Compensation Insurance. Workers' Compensation Insurance with statutory limits as required by the Labor Code of the State of California. Tenant shall require all subtenants and subcontractors similarly to provide Workers' Compensation Insurance for all of their employees. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the Sonoma County Water Agency by certified mail."

13.1.3 Hazard Insurance. Hazard insurance with standard extended coverage, including vandalism and malicious mischief endorsements, covering all of Tenant's property, improvements and alterations in, on or about the Premises to the extent of at least 80% of their full replacement cost, without depreciation. The proceeds from any such policy shall be used by Tenant for the replacement of property or the restoration of Tenant's improvements or alterations. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the Sonoma County Water Agency by certified mail."

13.1.4 Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the Sonoma County Water Agency by certified mail."

13.2 Policy Obligations. Tenant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

13.3 Increases in Minimum Policy Limits. Policy limits on insurance policies regarding coverage shall be periodically increased in a commercially reasonable manner reasonably satisfactory to the Landlord.

13.4 Certificate of Insurance. Tenant shall furnish Landlord with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before commencement of the Lease, Tenant shall furnish Landlord with certificates of insurance representing all insurance required by this Lease.

13.5 Failure to Maintain Insurance, Proof of Compliance. Tenant shall deliver to Landlord, in the manner required for notices, copies or certificates of all insurance policies required by this Lease, together with evidence satisfactory to Landlord of payment required for procurement and maintenance of the policy, within the following time limits:

13.5.1 Execution of Lease. For insurance required at the commencement of this Lease, upon execution of the Lease by all Parties thereto.

13.5.2 After Execution of Lease. For insurance required at a later date, at least ten (10) days before the requirement takes effect, or as soon thereafter as the requirement, if new, takes effect.

13.5.3 Renewals and Replacements. For any renewal or replacement of a policy already in existence, at least ten (10) days before expiration or other termination of the existing policy.

13.5.4 Failure to Procure and Maintain Insurance. Notwithstanding anything stated to the contrary herein, if Tenant fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in force and paid for, and either such failure or refusal continues for ten (10) days after written notice to Tenant by Landlord, Landlord shall have the right, at its election and without notice, to procure and maintain such insurance.

Section 14. Indemnification.

14.1 Indemnity by Tenant. Tenant shall defend, indemnify and hold Landlord harmless from and against all liability and claims of liability, for damage to property or injury to persons resulting from the actions of Tenant, its agents, contractors, employees, guests, invitees, licensees and permittees (collectively, “*Tenant’s Agents*”) on or about the Premises including the Lease Site, and including, but not limited to, the construction and operation of the System, except to the extent that such liability or loss is due to any active negligence or willful misconduct of Landlord or its agents, employees, contractors, guests, invitees, licensees and permittees (collectively, “*Landlord’s Agents*”).

14.2 Indemnity by Landlord. Landlord shall defend, indemnify and hold Tenant harmless from and against all liability and claims of liability, for damage to property or injury to persons resulting from the active negligence or willful misconduct of Landlord and Landlord’s Agents on or about the Premises, including the Lease Site, except to the extent that such liability or loss is due to any negligent or intentional acts of Tenant or Tenant’s Agents.

Section 15. Environmental.

15.1 Landlord warrants that it has not currently violated and is presently in compliance with all environmental laws, regulations, and ordinances at the federal, state, and local levels pertaining to or otherwise impacting the Premises, including, without limitation, all laws, regulations, and ordinances relating to the management, control, and reporting of pollutants, contaminants, hazardous wastes, solid wastes, hazardous materials, hazardous substances, and petroleum or petroleum-related substances in the environment and within above- and below-ground structures and facilities. Landlord shall not violate, and shall indemnify Tenant for, from and against any claims, costs, damages, fees or penalties

arising from a violation (past, present or future) by Landlord or Landlord's Agents of, any federal, state or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Premises, except to the extent such claims are caused by the negligence or willful misconduct of Tenant or Tenant's Agents.

15.2 Tenant shall not violate, and shall indemnify Landlord against, any claims, costs, damages, fees or penalties arising from a violation by Tenant or Tenant's Agents of any federal, state or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Premises, except for any such violation which is imposed by reason of the existence on or under the Premises of hazardous substances on the Effective Date of this Lease, and except for a violation that is covered by Landlord's indemnity under Section 14. This provision shall survive termination of this Lease.

Section 16. Termination.

16.1 Termination by Tenant. Subject to Section 17 below, but notwithstanding any other provisions of this Lease, Tenant shall have the right, at any time on ninety (90) days notice to Landlord, to terminate this Lease and surrender to Landlord all of Tenant's right, title and interest in and to the Premises by (a) executing and delivering to Landlord, or placing on record, a quitclaim deed to Landlord respecting all of the Premises, (b) paying to Landlord on or before the effective date of such termination a sum equal to all rent and other amounts accruing to the time of termination, and (c) removing the System and restoring the Lease Site as provided in Sections 17.1 and 17.2 below. Such removal and restoration costs shall be at Tenant's sole cost and expense.

16.2 Termination by Landlord for Default by Tenant. In the event of a default by Tenant, then Landlord shall have the option, but not the obligation, to terminate this Lease by delivering written notice to Tenant in accordance with Section 32. If the Landlord exercises its option to terminate this Lease under this section, then Tenant shall remove the System and all of Tenant's personal property located on the Premises and otherwise comply with Sections 17.1 and 17.2. Such removal and restoration costs shall be at Tenant's sole cost and expense.

Section 17. Surrender and Restoration; Acquisition by Landlord.

17.1 Surrender. Upon any termination, surrender, or expiration of this Lease, Tenant shall remove all of the System and related improvements, at Tenant's sole cost and expense, and shall peaceably deliver up to Landlord possession of Lease Site or any part thereof, and other rights granted by this Lease, and shall execute, at Landlord's request, any and all documents needed to record or evidence such termination with the appropriate governmental agencies.

17.2 Restoration. Upon any termination, surrender, or expiration of this Lease, then within one year of the termination, surrender, or expiration of this Lease, Tenant shall restore the Lease Site to its original condition as the same existed at the inception of this Lease, and shall repair any damage to

the Premises as a result of any removal of Tenant's improvements under this Section. Such restoration and repair shall be at Tenant's sole cost and expense.

17.3 Financial Assurances. Tenant shall provide financial assurances to cover the estimated costs of carrying out Tenant's obligations under Section 17.2. The financial assurances shall consist of (i) a deposit of cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody's, in an amount equal to _____.

Section 18. Eminent Domain.

The Parties understand and agree that if the Lease Site, or a part thereof, are taken in condemnation proceedings or by the exercise of any right of eminent domain, then this Lease may be terminated at the election of Tenant. In such event, neither Party shall have any obligation to the other except that Landlord shall pay to Tenant a prorated refund of unearned prepaid rentals, if any.

Section 19. Assignment.

19.1 Assignment. Tenant shall not have the right to assign or sublease its interest in the Lease Site under this Lease unless the written consent of Landlord is first obtained, which consent shall not be unreasonably withheld, conditioned or delayed. Among other things, Landlord may withhold its consent to an assignment or sublease if (a) the transferee or assignee of the Lease does not agree to continue to operate the System and to contract to sell power on substantially the same terms as set forth in the PPA, or (b) the transferee or assignee fails to provide the financial assurances required by Section 17.3. Upon assignment of this Lease in whole, Tenant shall be released from all further liability hereunder. Notwithstanding the foregoing, Tenant may, without the consent of Landlord, transfer, encumber, or otherwise assign any or all of Tenant's rights and interests in the Lease Site and in this Lease (a) to any bona fide, financially solvent affiliate of Tenant, provided such assignee expressly agrees to assume and be bound by all of the terms and conditions of this Lease and the PPA, or (b) to one or more mortgagees, beneficiaries of deeds of trust, or other holders of a beneficial interest in a Mortgage ("**Mortgagees**") in connection with financing (including refinancing) of the System and the development of the Lease Site, subject to the conditions set forth in Section 21.10.

Section 20. Consent to Mortgage.

20.1 Consent. Tenant may from time to time, without the prior written consent of Landlord, encumber Tenant's interest in this Lease by mortgage, deed of trust or other real or personal property security instrument (a "**Mortgage**"), provided that any Mortgage and all rights acquired under it (a) shall be subject to each and all of the covenants, conditions and restrictions stated in this Lease and to all rights and interests of Landlord, and that Mortgagee shall assume each and every obligation of Tenant upon foreclosure, except as provided in Sections 21.3 and 21.5; (b) shall contain prohibiting transfer or assignment of the Lease to or by a Mortgagee or other third party unless the transferee or assignee of the Lease agrees to continue to operate the System and to contract to sell power on substantially the same terms as set forth in the PPA; and (c) that Tenant shall promptly upon the execution of any Mortgage deliver a true copy thereof to Landlord. Nothing contained in such Mortgages shall release or be deemed to relieve Tenant from full and faithful observance and performance of the terms, covenants and conditions herein contained to be observed and performed by

Tenant or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of Landlord hereunder, except as expressly provided for herein. Such mortgage or other security interest shall encumber only Tenant's leasehold interest, and shall not encumber the fee simple interest of the landlord in any way.

20.2 Statement by Landlord. At the request of Tenant or a Mortgagee, Landlord (a) shall execute, acknowledge and deliver to such Tenant or Mortgagee, a written statement declaring: (i) either that the Lease is unmodified and in full force and effect, or the manner in which the Lease had been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Tenant's monetary obligations hereunder have been paid in advance; (iii) whether Tenant is or is not then in default hereunder; and (iv) whether any past defaults have been fully cured and (b) enter into an estoppel and consent agreement recognizing the rights of the Mortgagees as may be reasonably requested by Mortgagees.

Section 21. Protection of Mortgagee.

Any Mortgagee of any interest of Tenant hereunder shall for so long as its Mortgage is in existence and until the lien thereof has been extinguished be entitled to the following protection:

21.1 No Amendment. Except in connection with the acquisition by Landlord of the System pursuant to the PPA, Landlord shall not agree to any amendment, mutual termination or modification or accept any surrender of this Lease, nor shall any such amendment, termination, modification or surrender be effective, without the written consent of the Mortgagee.

21.2 Notice of Default. In the event of a default by Tenant, Landlord shall have no right to terminate this Lease unless and until Landlord shall first have given Mortgagee(s) a second written notice of Tenant's default and failure to cure same within the period(s) specified in Section 32 and thereafter afforded Mortgagee(s) an opportunity to cure such default within the period(s) specified in Section 32 and Mortgagee(s) shall have failed to effect the cure of such default within the period(s) specified in Section 32. Landlord may elect to give the written notice of default to the Mortgagee(s) concurrent with the notice of default provided to Tenant. In such case, the Mortgagee's thirty (30) day cure period shall run concurrently with Tenant's.

21.3 Right to Perform. Mortgagee shall have the right at any time to pay any rent due hereunder and to perform or cause to be performed any other obligation of Tenant at or within the time such payment or performance is required under this Lease. Nothing in this Lease shall be construed to obligate Mortgagee to cure any default of Tenant.

21.4 Right to Cure. Mortgagee shall be entitled to remedy any default under this Lease in the manner and on the same terms as granted to Tenant in Section 32 of this Lease.

21.5 Foreclosure. If Tenant's First Mortgagee (meaning the Mortgagee that recorded first in time) becomes the assignee of this Lease by means of foreclosure or Transfer in lieu thereof, such First Mortgagee shall be personally liable under this Lease only for the period First Mortgagee remains the lessee hereunder, provided that any subsequent assignee or Tenant shall assume and agree to be bound by all the terms and conditions of this Lease.

21.6 Termination of Lease. If this Lease shall terminate prior to the expiration of the Term for any reason, including without limitation by operation of law or because of a failure to cure a default, Landlord shall enter into a new lease in recordable form with the Mortgagee which holds the most senior lien against Tenant's leasehold estate and demands such new lease within thirty (30) days following receipt of Landlord's notice. Such new lease shall contain the same terms and provisions as this Lease. Landlord's obligation to enter into a new lease as provided herein is conditioned upon the cure of any and all defaults under this Lease other than defaults, if any, that are unique to the defaulting Tenant which cannot be cured by the payment of money or the acts of the curing Mortgagee.

21.7 Assignment Following Foreclosure or Termination. In the event (i) that any Mortgagee acquires the Tenant's leasehold estate hereunder following judicial foreclosure of; or exercise of the power of sale contained in, any Mortgage or by a transfer in lieu thereof; or (ii) any Mortgagee enters into a new lease, then provided that the Mortgagee provides the financial assurances required by Section 17.3, Mortgagee shall have the right to assign or transfer this Lease or any such new lease upon written consent from the Landlord, which consent shall not be unreasonably conditioned, withheld or delayed. The liability of such Mortgagee under this Lease or any such new lease shall cease upon the assignment, provided that the assignee agrees to perform each and every obligation of the Tenant under this Lease or such new lease and that there is no default under this Lease or any such new lease. The right of such Mortgagee to assign this Lease or any such new lease as provided herein is conditioned upon the cure of any and all defaults under this Lease as of the time of such assignment.

21.8 No Merger. In the event Tenant acquires fee ownership of the Premises or the Lease Site, or in the event of Tenant's voluntary surrender of the leasehold estate, there shall be no merger of the leasehold estate created by this Lease with the fee without the prior written consent of all Mortgagees.

21.9 Easements Not Terminable. Any easement or license entered into by Tenant pursuant to this Lease shall not be terminable by Landlord because of a breach of this Lease unless all Mortgagees shall have received notice of such breach and have failed to cure such breach pursuant to this Section and Section 32.

21.10 Continued Operation of System. Notwithstanding anything in this Section 21 to the contrary, no transfer or assignment of the Lease to or by a Mortgagee or other third party shall be permitted unless the transferee or assignee of the Lease agrees to continue to operate the System and to contract to sell power to Landlord on substantially the same terms as set forth in the PPA.

Section 22. Notices.

Any notice, request, demand, statement, or consent required or permitted to be given shall be in writing, shall be signed by or on behalf of the party giving notice, and shall be sent by certified or registered mail, return receipt requested, postage prepaid, facsimile, or by a recognized overnight delivery service, to the other party to the respective address given herein below:

Landlord:	Sonoma County Water Agency
	Attn: General Manager
	404 Aviation Blvd.
	Santa Rosa, CA 95403

With copy to: Office of the Sonoma County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

Tenant:

With copy to:

Any such notice given as aforesaid shall be conclusively deemed to have been given and received on the business day next following the day on which such notice was mailed or faxed. Either party may, from time to time, furnish, in writing, to the other party, notice of a change in the address to which notices are to be given hereunder.

Section 23. Security; Landlord's Access.

Tenant is solely responsible for implementing at the Lease Site such security measures as are necessary, in Tenant's opinion, to protect the System from damage. Such security measures shall be provided at Tenant's sole cost and expense, including, if necessary, warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System and other improvements or injury or damage to persons or property on the Lease Site. Landlord shall have no liability for any damage to the System or to Tenant's employees that results in any way from a failure by Tenant to implement adequate security measures. Landlord may obtain access to the Lease Site for the purpose of inspection of activities thereon at all reasonable times (including under emergency conditions), provided that such access shall not unreasonably interfere with Tenant's System or Operations.

Section 24. Entire Agreement.

This Lease and the Exhibits attached hereto contain the entire understanding and agreement of the Parties hereto and shall not be modified in any manner except by an instrument in writing executed by both Parties. If any part, term, or provision of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease, and shall not render this Lease unenforceable or invalid as a whole, unless the part determined to be invalid, illegal, or unenforceable is so significant that either Landlord or Tenant would not have entered into this Lease in the absence of such part. Otherwise, the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Lease will remain in full force.

Section 25. Governing Law.

This Lease shall be governed, construed, and interpreted in accordance with the substantive laws of the State of California, notwithstanding its conflict of laws and principles. Any legal action arising out of or relating to this Lease shall be filed in Sonoma County, California.

Section 26. Headings.

The headings contained in this Lease are for reference purposes only and shall not affect the meaning or interpretations of this Lease.

Section 27. Incorporation by Reference.

The Recitals and the Exhibits are hereby incorporated by reference and made a part hereof.

Section 28. Waivers and Amendments.

This Lease may be amended, superseded, cancelled, renewed, or extended, and its terms or covenants hereof may be waived, only by a written instrument executed by the Parties hereto or in the case of a waiver, by the Party waiving compliance. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this Lease or in any other such instrument, whether by conduct or otherwise, shall be deemed to be, or construed as, a further or continuing waiver of any breach, or a waiver of the breach of any other term or covenant contained herein.

Section 29. Binding Effect.

This Lease shall be binding upon and inure to the benefit of the Parties, or its permitted heirs, successors or assigns.

Section 30. Further and Additional Documents.

The Parties agree to execute such other, further and additional documents as may be required to carry into effect the terms and conditions of this Lease.

Section 31. Attorneys Fees on Default.

If any Party hereto brings any proceedings to enforce any of the terms, covenants or conditions hereof, the prevailing Party shall be entitled to recover from the other Party or Parties thereto reimbursement for all reasonable expenses, costs and attorneys' fees incurred in connection therewith.

Section 32. Notice and Cure; Defaults; Termination.

Should either Party become in default under any term or condition of this Lease, the non-defaulting Party shall give written notice by certified mail to defaulting party at the address provided hereinafter, setting forth the nature of each claimed event of default. The defaulting Party shall have thirty (30) days from the receipt of such notice to fully complete a cure of every alleged claimed event

of default, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within thirty (30) days after such notice is given and thereafter prosecuted with due diligence. Should the defaulting Party not timely cure the event(s) of default, the non-defaulting Party may then pursue any remedy to which it may be entitled under the laws of the State of California, which remedies may include, but not be limited to, termination of the Lease, instituting a suit for damages, including incidental and consequential damages, occasioned by the breach of this Lease by the defaulting Party. The addresses to serve such notices are set forth in Section 22 above.

Section 33. Ownership of Improvements.

The System and related improvements shall not be deemed to be permanent fixtures (even if permanently affixed to the Lease Site) and shall be and remain the sole property of Tenant. Landlord hereby waives any statutory or common law lien that it might otherwise have in or to the System and the improvements or any part thereof by virtue of its ownership of the Premises and agrees that, notwithstanding the occurrence of an event of default under the Lease beyond all applicable notice and cure periods, Tenant may remove the System from the Premises as provided by the terms of this Lease. The System and their components may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Landlord, with Landlord's fee interest in the Premises.

Section 34. Force Majeure.

The Parties' obligations under this Lease (exclusive of payments of rent) shall be suspended and excused, and the Term (except for the expiration date), and any other time periods set forth herein shall continue and be extended for a like period of time, while any Party is hindered or prevented, in whole or in part, from (i) conducting Operations or (ii) complying with any term, covenant, condition or provision of this Lease, by any unforeseeable event or circumstance that prevents a Party from performing its obligations under this Lease, which event or circumstance (i) beyond the reasonable control and occurring without the fault or negligence of the Party, and (ii) by the exercise of due diligence, the Party is unable to overcome or avoid or cause to be avoided; provided, however, that economic hardship, standing alone, shall not constitute an event or circumstance excusing performance or giving rise to a right to suspend performance. Notwithstanding the foregoing, Tenant's obligations under Section 17.2 shall not be suspended or excused by any force majeure event.

Section 35. No Partnership.

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, or any other association between Landlord and Tenant, other than the relationship of lessor and lessee.

Section 36. Brokerage Commissions.

Landlord and Tenant each represent that such Party has not incurred, directly or indirectly, any liability on behalf of the other Party for the payment by the other Party of any real estate brokerage commission or finder's fee in connection with this Lease. Landlord and Tenant shall indemnify, defend and hold the other Party harmless from and against any claim for any brokerage commissions or finder's fees claimed to be due and owing by reason of the indemnifying Party's activities.

Section 37. No Third Party Beneficiaries.

Nothing in this Lease will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except for the rights of Landlord to acquire the System under the PPA as expressly incorporated herein.

Section 38. Relation to Conditions of Approval.

In the event of a conflict between the provisions of this Lease and any term, condition, or provision contained in a condition of approval or operation imposed by PRMD, the terms such other condition shall control.

Section 39. Memorandum of Lease Agreement.

The Parties agree that they will execute a Memorandum of Lease Agreement in a form substantially similar to that attached as **Exhibit C** (the “*Memorandum*”), and that the executed Memorandum will be placed of record in the records of Sonoma County, State of California. This Lease will not be placed of record. Upon the expiration or termination of this Lease, the Parties agree to execute a release sufficient for recording in the public record in order to confirm that this Lease is released and is no longer a covenant running with the land. The release will be in a form reasonably acceptable to the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed on the day and year first above written.

LANDLORD:

SONOMA COUNTY WATER AGENCY

Name: _____

Its: _____

TENANT:

Name: _____

Its: _____

EXHIBIT A

Legal Description

Premises

Real Property situated in a presently unincorporated area of the County of Sonoma, State of California described as follows:

EXHIBIT B

Legal Description of the Lease Site

Real Property situated in a presently unincorporated area of the County of Sonoma, State of California described as follows:

EXHIBIT C

Memorandum of Lease Agreement

*Recording Requested By and
When Recorded Return to:*

[Company Name]
Attn: [Name]
[Address Line 1]
[Address Line 2]

SPACE ABOVE THIS LINE FOR
RECORDER'S USE ONLY

MEMORANDUM OF PHOTOVOLTAIC ENERGY FACILITY LEASE AGREEMENT

THIS MEMORANDUM PHOTOVOLTAIC ENERGY FACILITY LEASE AGREEMENT ("**Lease**") is made and entered into this ____ day of _____, 2010 (the "**Effective Date**"), by and between **SONOMA COUNTY WATER AGENCY**, a body corporate and politic of the State of California, with a mailing address of 404 Aviation Blvd, Santa Rosa, California 95403 (the "**Landlord**") and _____ ("**Tenant**"). Landlord and Tenant are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Photovoltaic Energy Facility Lease Agreement, dated even herewith (the "**Lease Agreement**"), relating to the exclusive lease for a portion of that certain parcel of land located in Sonoma County, State of California, as more particularly described in **Exhibit A** attached hereto (the "**Premises**"), for development, construction and operation of a floating solar photovoltaic facility and other renewable energy facilities. The Lease Agreement is expressly incorporated herein by reference and made a part hereof as though fully set forth herein.

WHEREAS, by this Memorandum, Landlord and Tenant desire to provide public notice of the Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Public Notice. All members of the general public are hereby placed on notice of inquiry as to the specific provisions of the Lease Agreement, all of which are incorporated herein by reference with the same force and effect as if herein set forth in full. This Memorandum shall be recorded in the real estate records of Sonoma County, State of California, in lieu of recording the entire Lease Agreement.

2. Lease Term. The Lease will become effective on the Effective Date and shall have a term of twenty (20) years, unless earlier terminated in accordance with the provisions of the Lease Agreement.
3. Conflicts. In the event of any conflict between the terms of this Memorandum and the terms of the Lease Agreement, the terms of the Lease Agreement shall control.
4. Captions and Capitalized Terms. Caption headings are inserted herein only as a matter of convenience of reference, and in no way serve to define, limit, or describe the scope of intent of, or in any way affect, this Memorandum. Capitalized terms not defined in this Memorandum shall have the meanings ascribed to them in the Lease Agreement.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease Agreement as of the Effective Date.

LANDLORD:

SONOMA COUNTY WATER AGENCY

Name: _____

Its: _____

ACKNOWLEDGEMENTS FOR THE LANDLORD

STATE OF CALIFORNIA)
) ss:
COUNTY OF)

On _____, 2010, before me, _____,
a Notary Public in and for said County and State, personally appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Notary Public
My commission expires:

[Notarial Seal]

TENANT:

Name: _____

Its: _____

ACKNOWLEDGEMENT FOR TENANT

STATE OF CALIFORNIA)
) ss:
COUNTY OF)

On _____, 2010, before me, _____,
a Notary Public in and for said County and State, personally appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

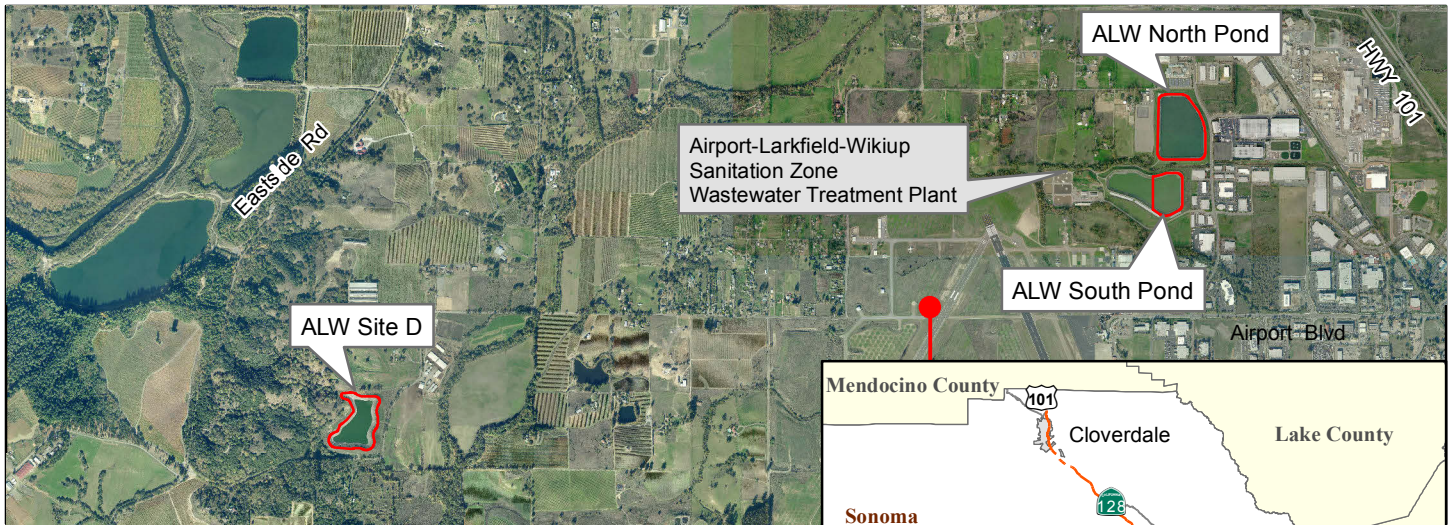
Notary Public
My commission expires:

[Notarial Seal]

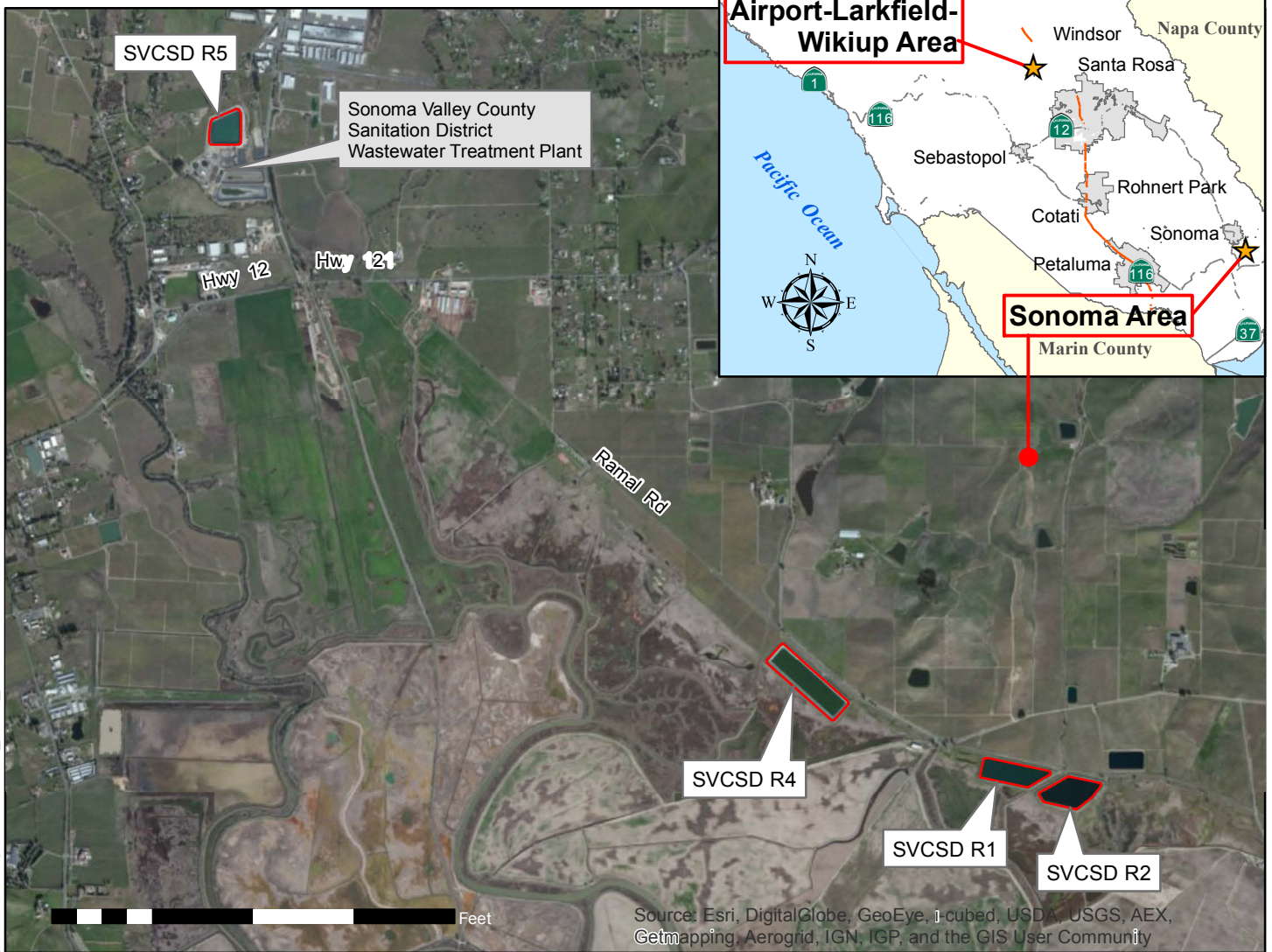
EXHIBIT A
TO MEMORANDUM OF LEASE AGREEMENT

EXHIBIT D

Construction Insurance Requirements



Airport Larkfield Wikiup Area Reservoir Locations

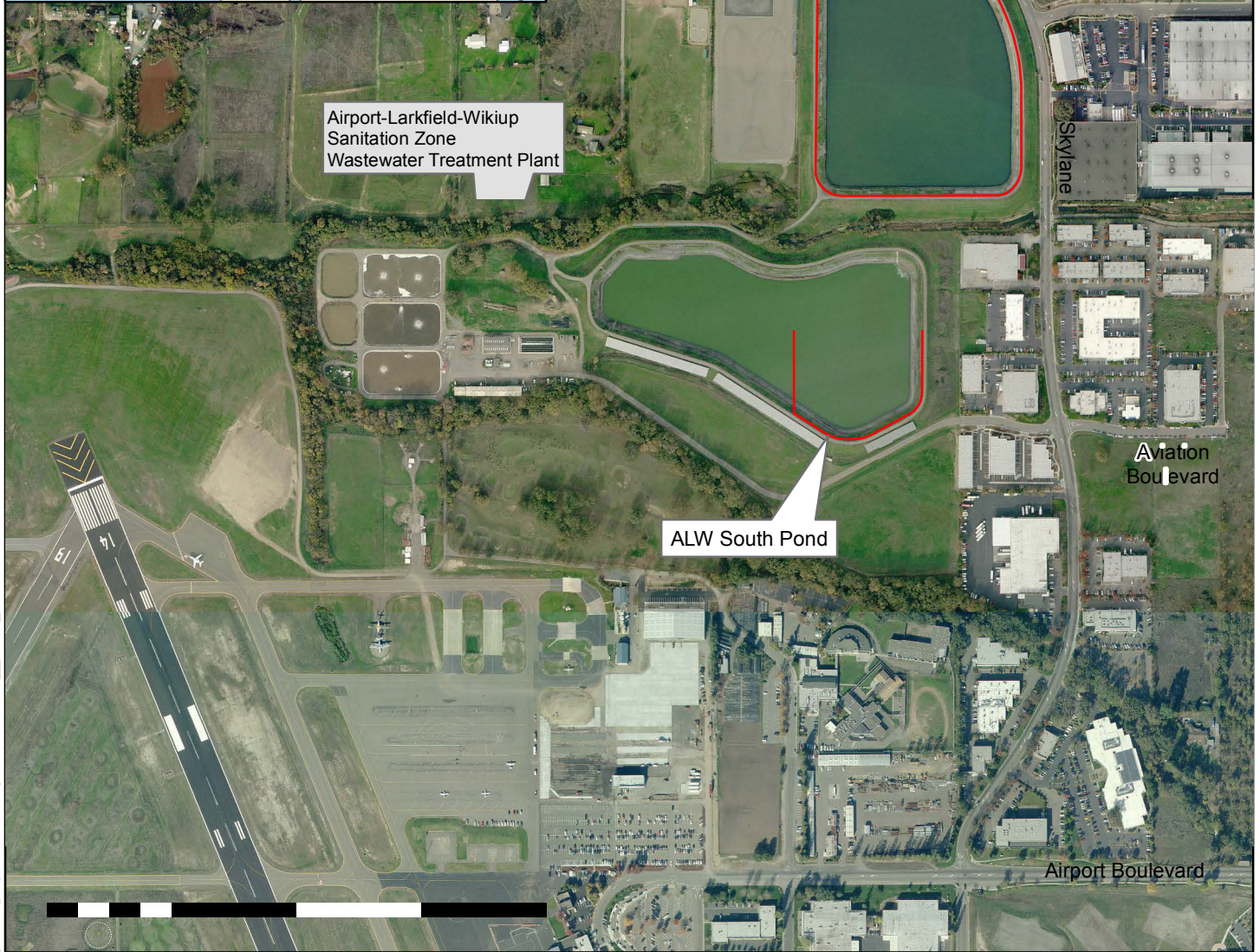


Sonoma Area Reservoir Locations



Sonoma County Water Agency Floating Solar Pond Locations

**Exhibit
C**



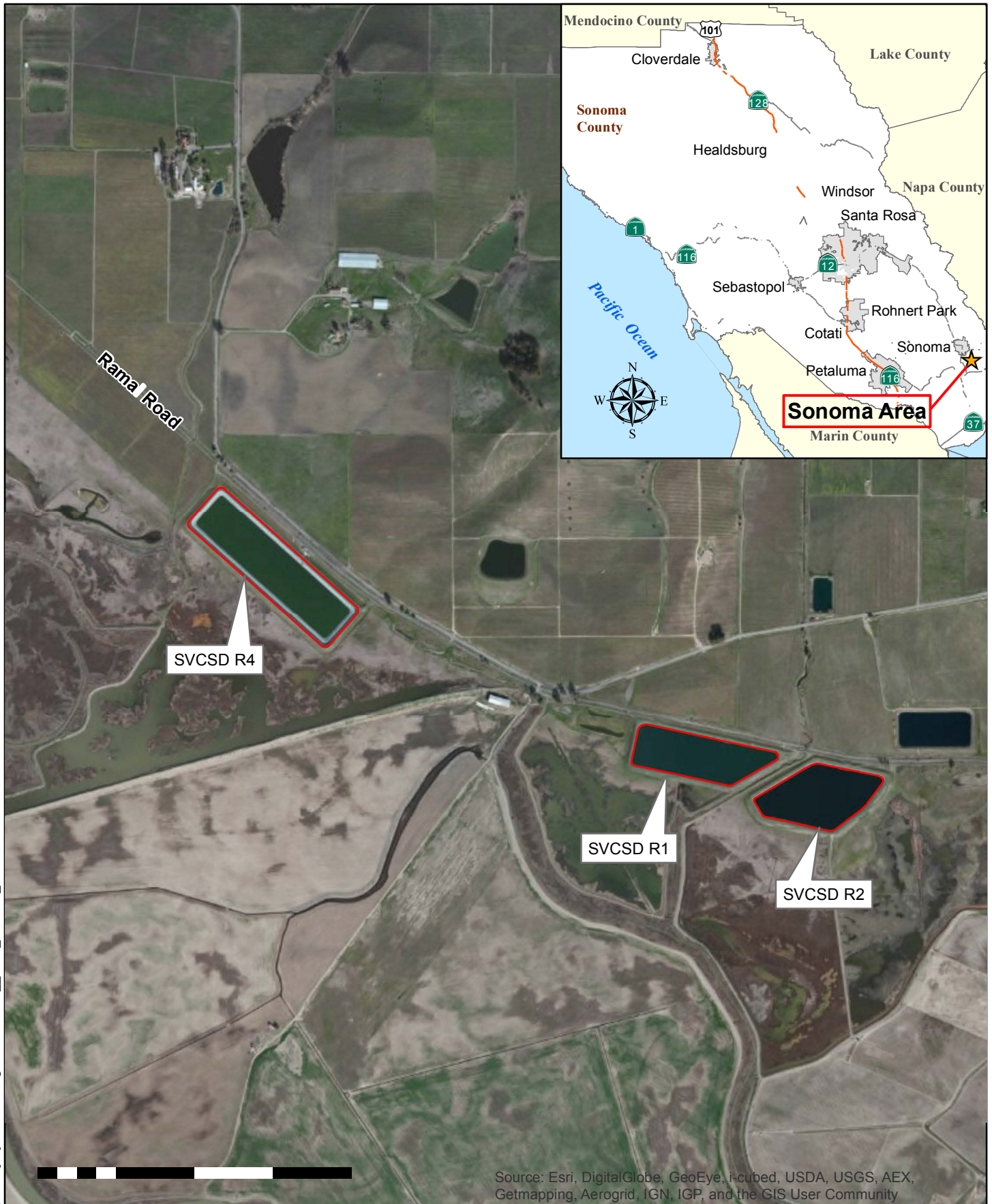
Sonoma County Water Agency
Floating Solar
Airport-Larkfield-Wikiup - North and South Ponds

Exhibit
C



Sonoma County Water Agency
 Floating Solar
 Airport-Larkfield-Wikiup - Site D

Exhibit
 C



Sonoma County Water Agency
Floating Solar
Sonoma Valley County Sanitation District - R1, R2, and R4

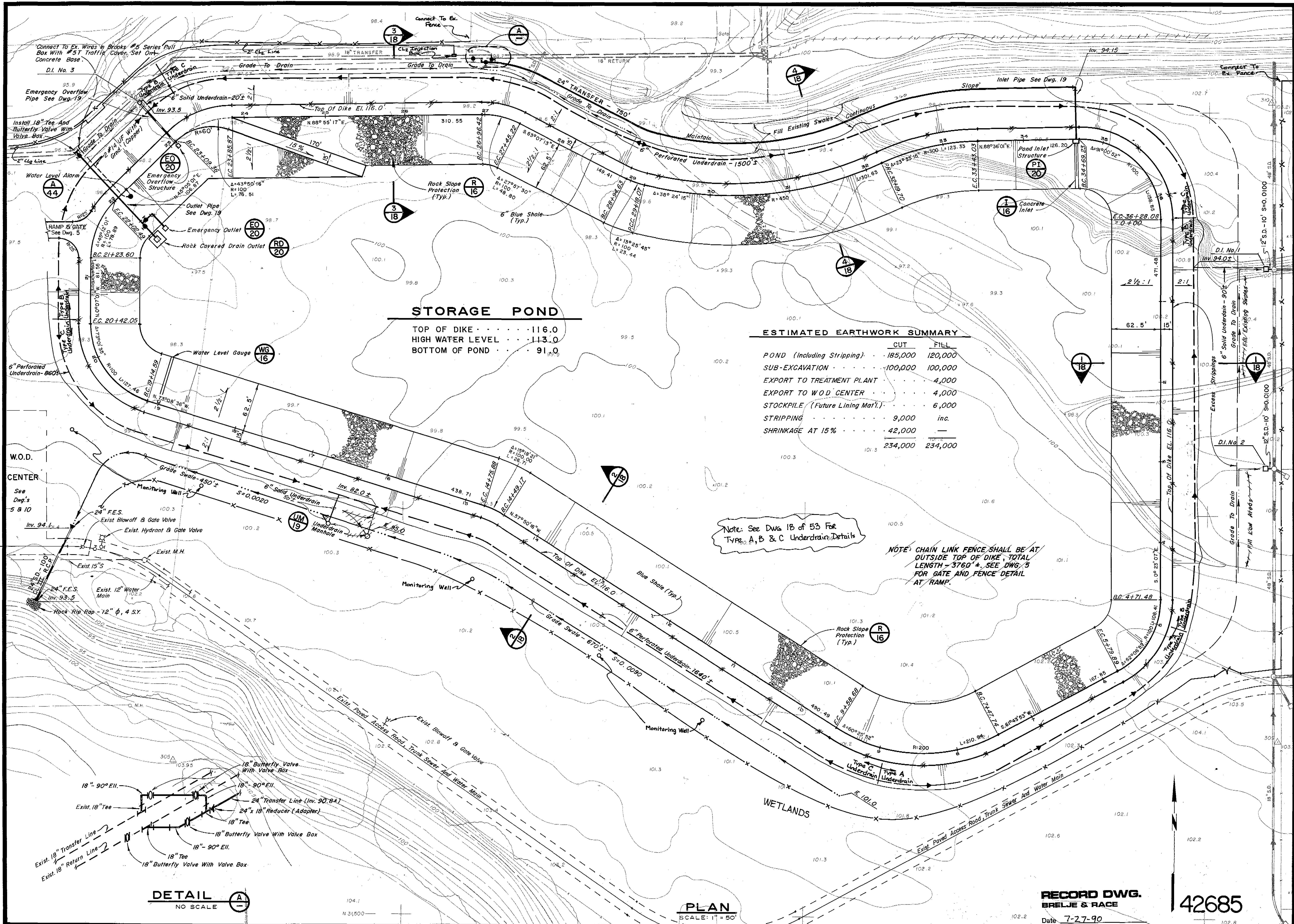
**Exhibit
C**

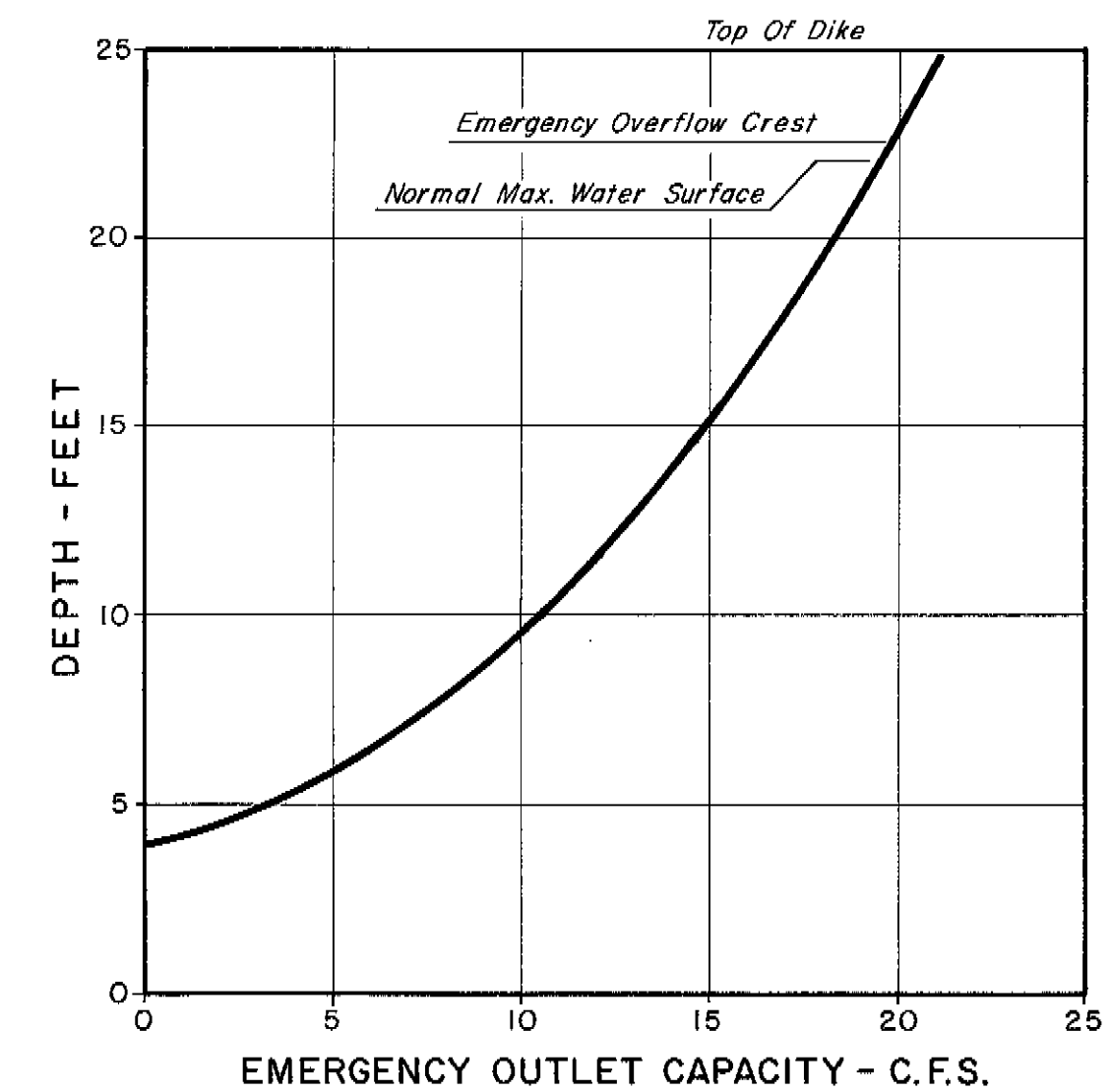
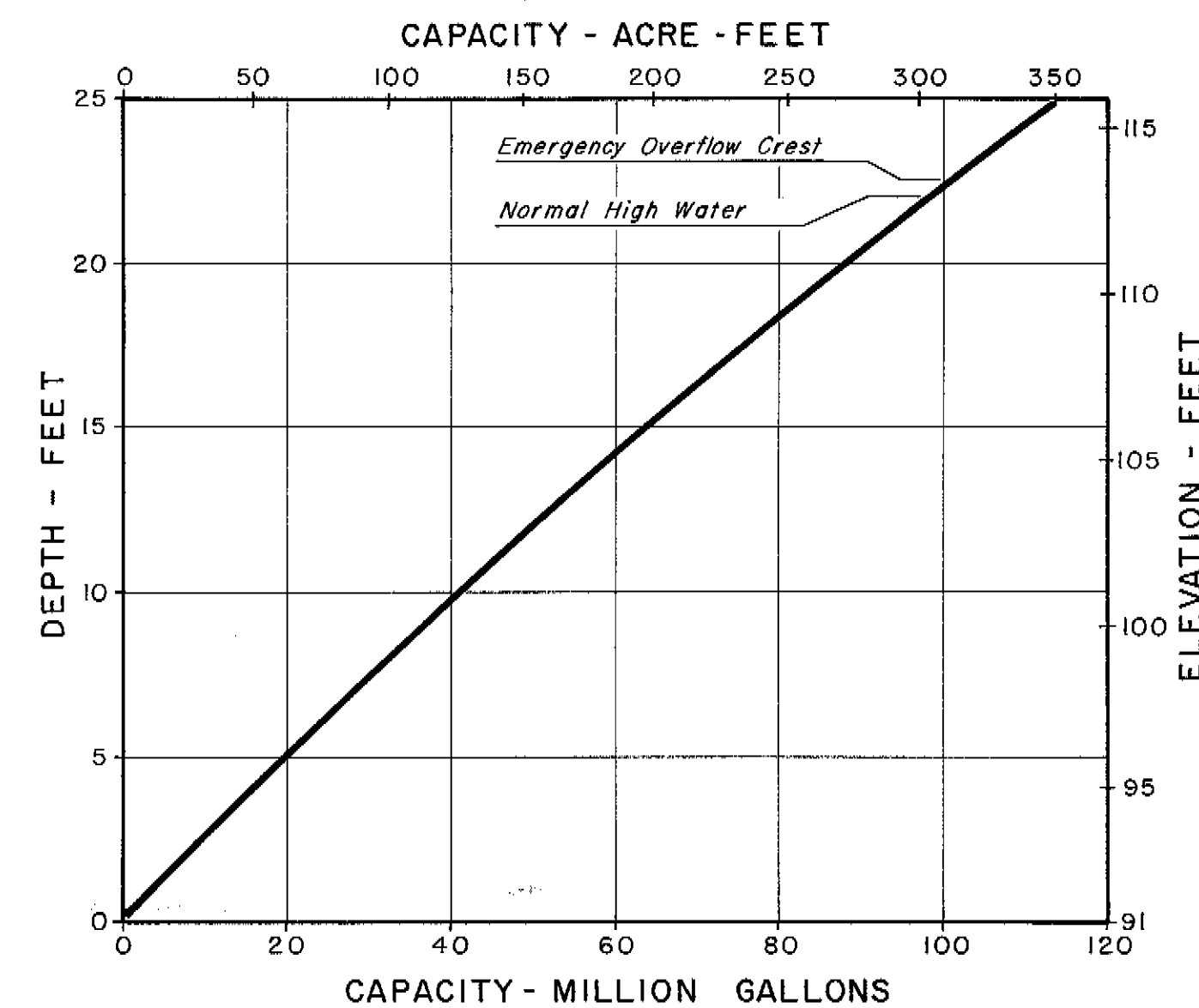
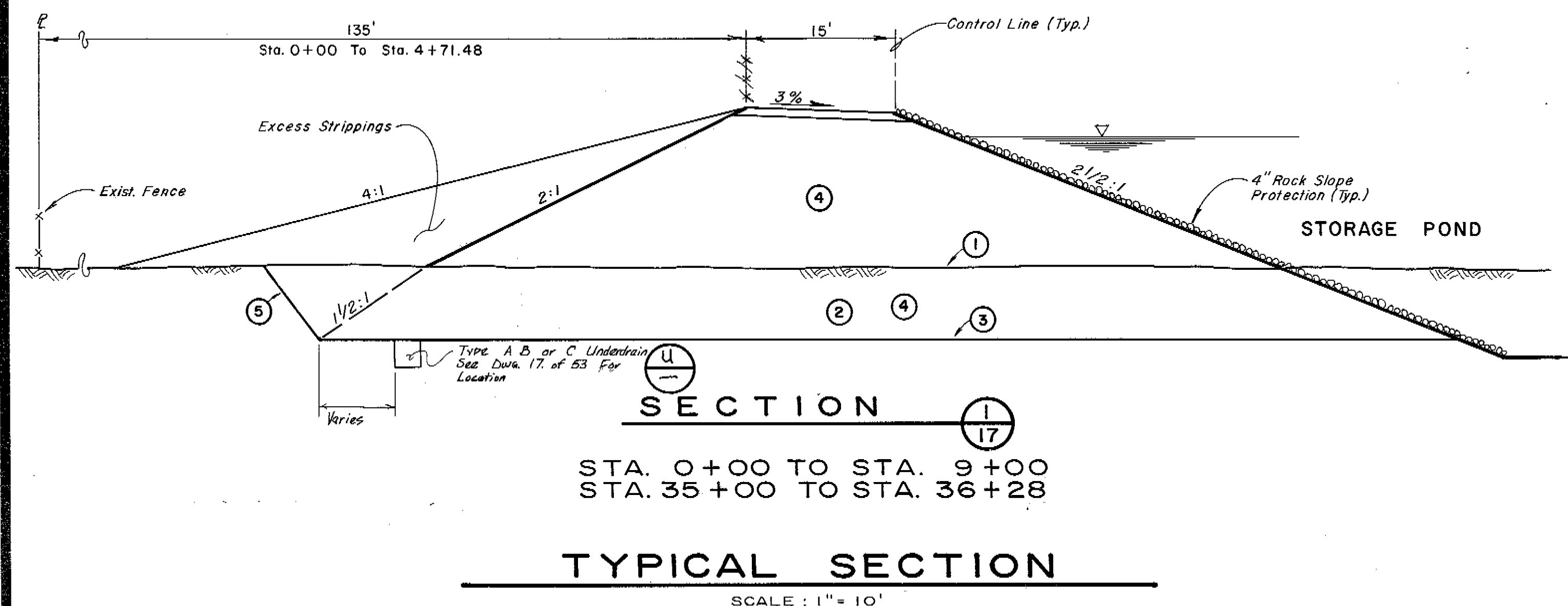
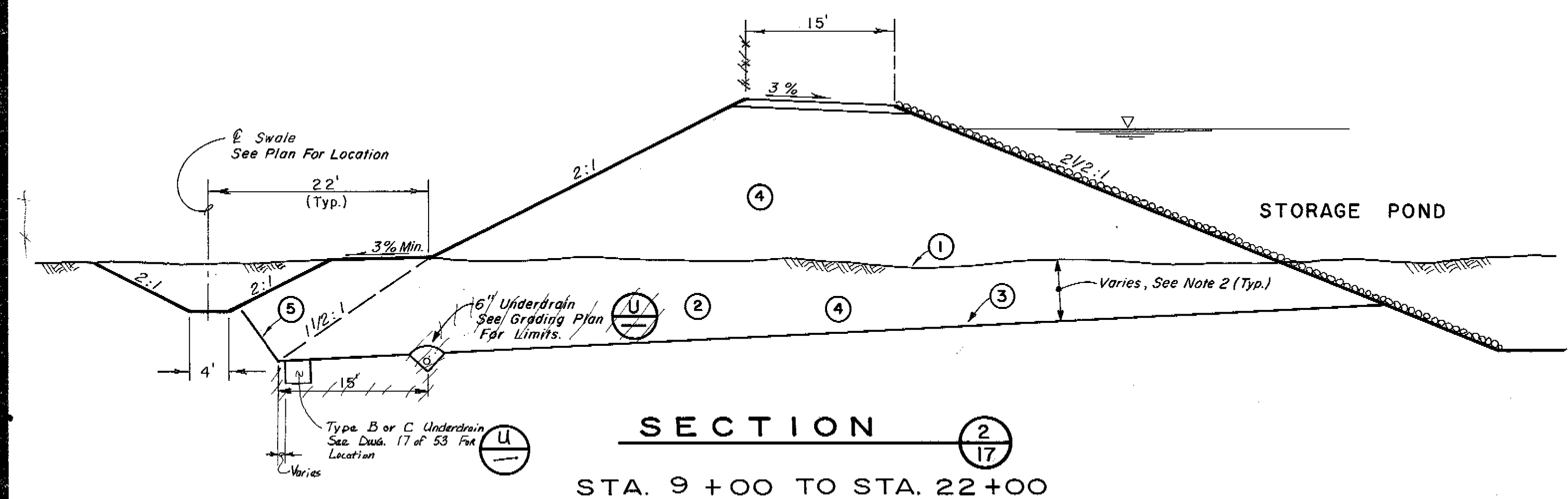
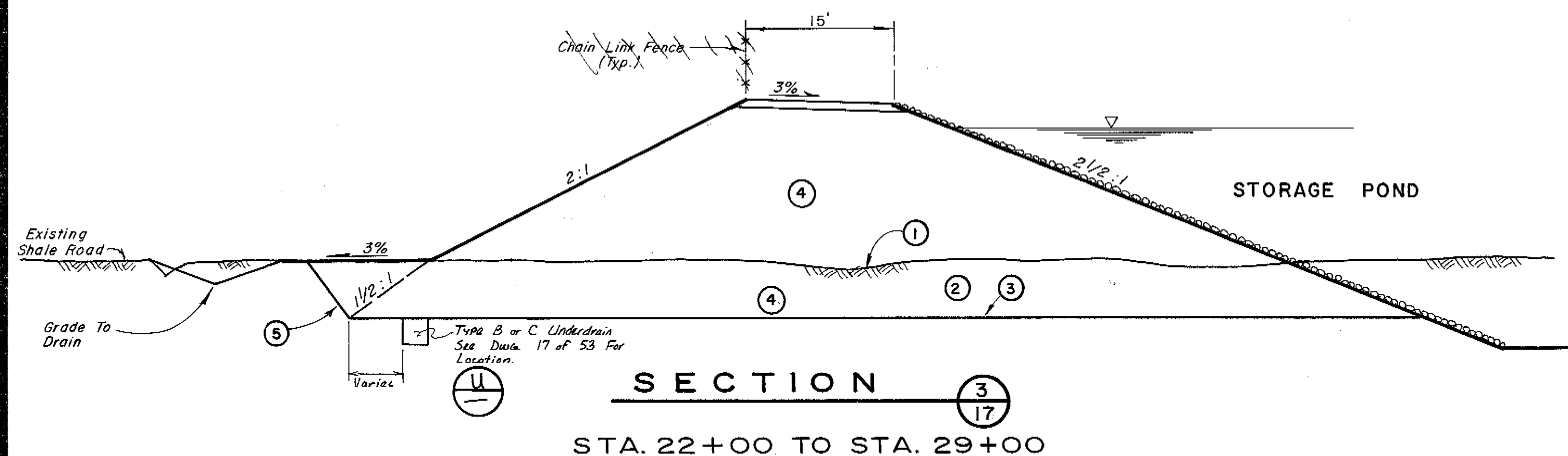
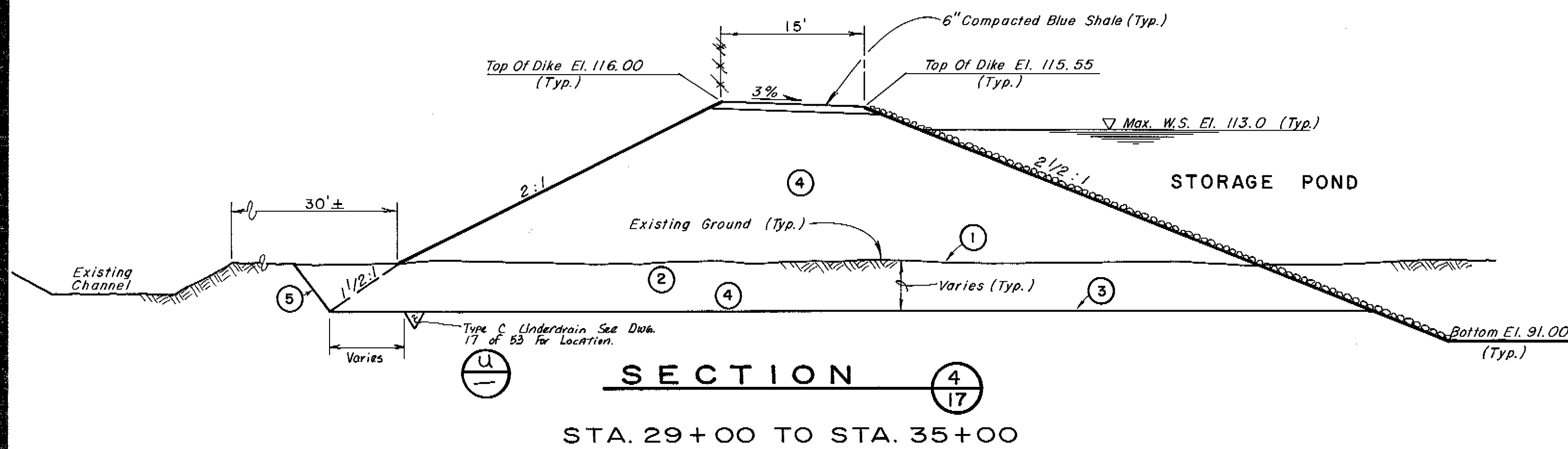
\\SD-DATA\Proj\special_projects\FloatingSolarInPonds_Ex-D_SVCSD_R5.mxd



Sonoma County Water Agency Floating Solar Sonoma Valley County Sanitation District - R5

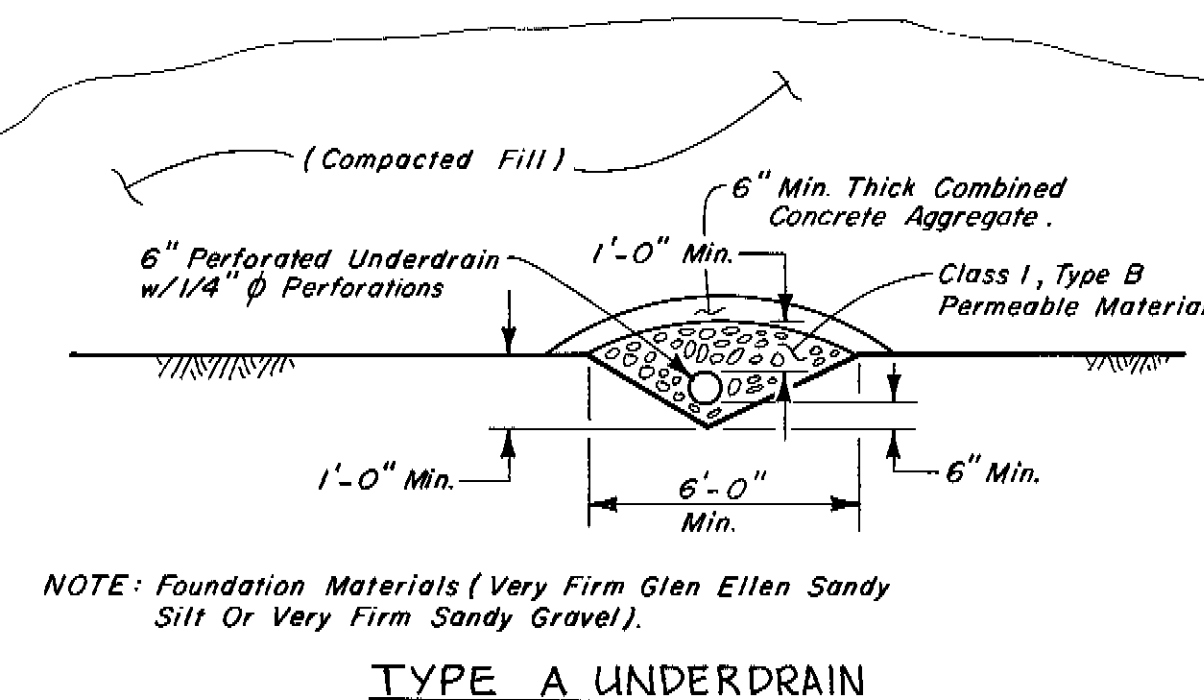
**Exhibit
C**



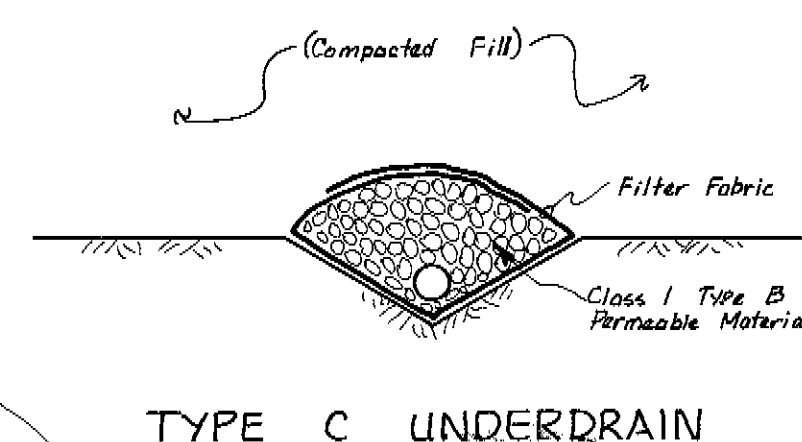
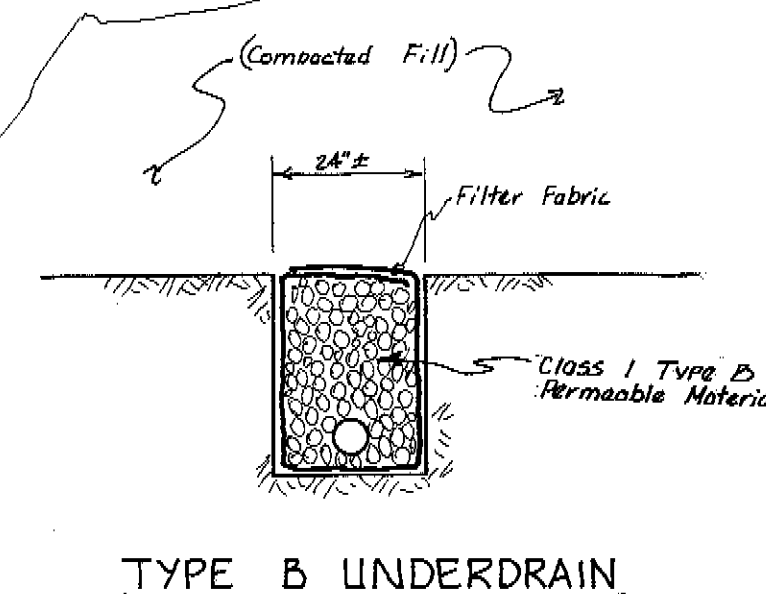


CONSTRUCTION NOTES FOR SECTIONS ON THIS DRAWING ONLY:

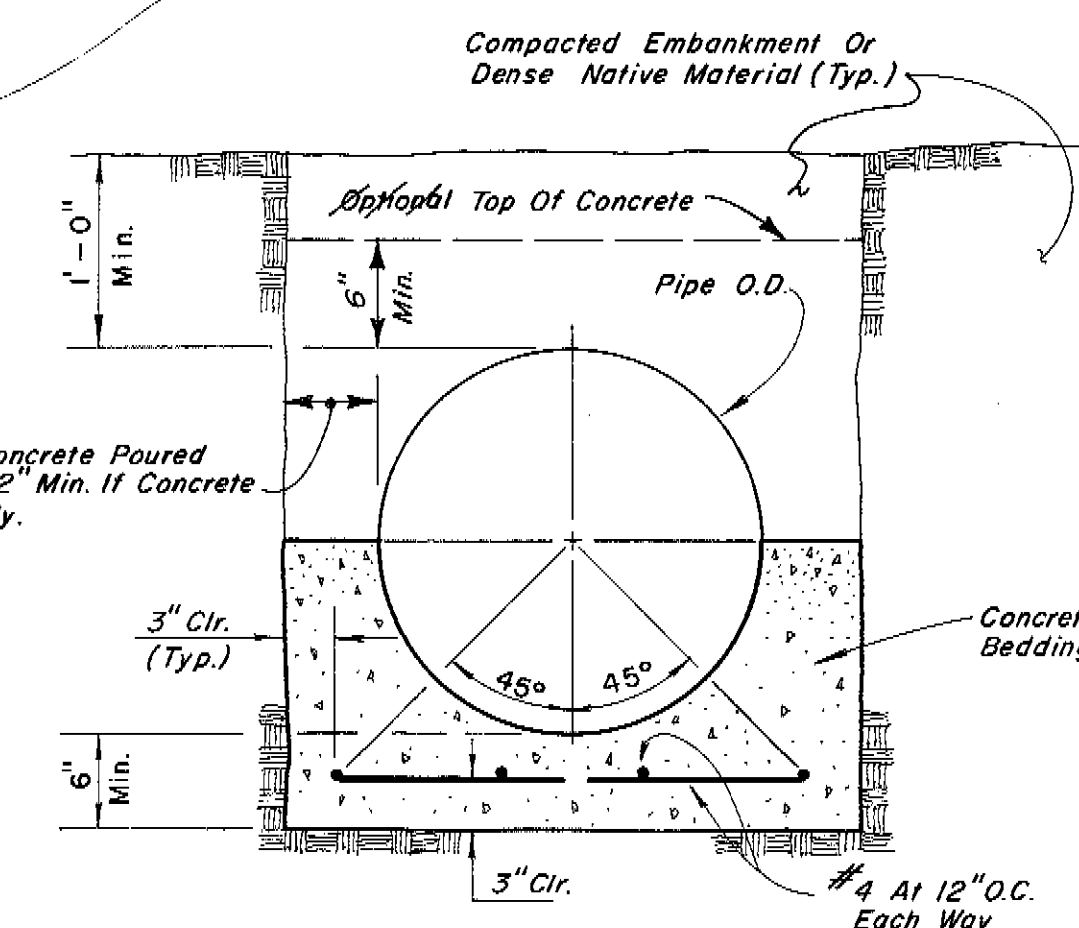
1. STRIP 3" MINIMUM VEGETATION, STOCKPILE FOR REDISTRIBUTION OR DISPOSAL, SEE SPECIFICATIONS.
2. FOUNDATION OBJECTIVE: SUBEXCAVATE TO FIRM MATERIAL. CONTROL GROUND WATER. REMOVE ALL LOOSE, WET SOIL. APPROXIMATE SUBEXCAVATION DEPTH: 2' TO 3' STA. 00+00 TO 9+00 AND STA. 22+00 TO 36+28; AS MUCH AS 10' TO 15" ON SOUTHERLY SIDE STA. 9+00 TO STA. 22+00.
3. ESTABLISH DIKE ON CLEAN SURFACE OF FIRM MATERIAL. ANTICIPATED FOUNDATION MATERIAL - COMPACT TO DENSE SANDY SILT OR DENSE GRAVEL. FOUNDATION SHALL BE APPROVED BY THE SOIL ENGINEER AND DIVISION OF SAFETY OF DAMS.
4. HOMOGENEOUS FILL - MATERIAL FROM EXCAVATION BLENDED AS REQUIRED TO MAINTAIN MINIMUM OF 30% PASSING THE #200 SIEVE. MAXIMUM SIZE 3 INCHES. SEE SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS.
5. SLOPE FOR STABILITY - 3/4:1 MAXIMUM.



UNDERDRAIN NO SCALE



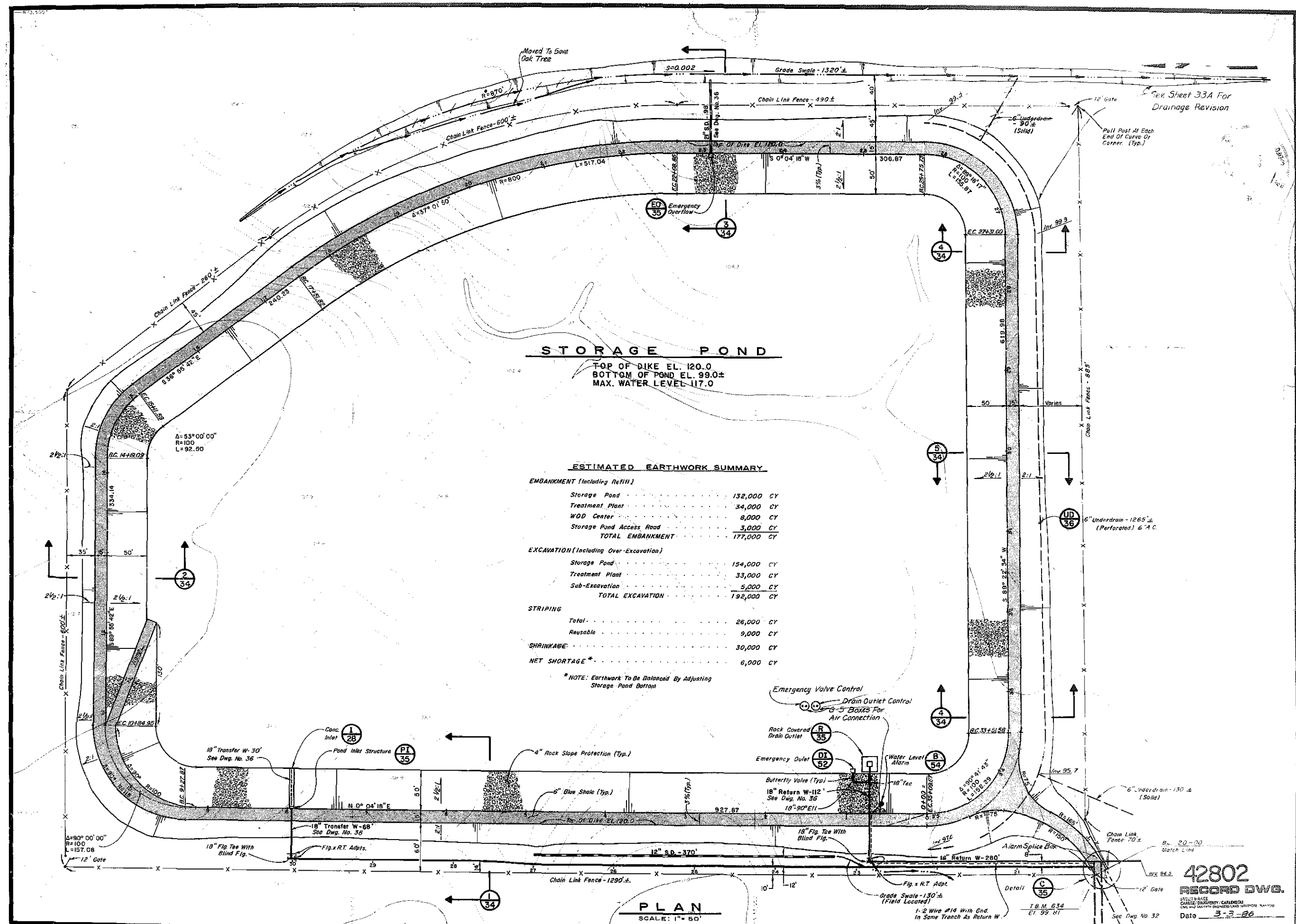
Note: See Dwa 17 of 53 For Location of Each Type



CONCRETE BEDDING NO SCALE

RECORD DWG.
BRELJE & RACE
Date 7-27-90

42686



BRELLIE & RACE
CARLILE/DAUGHERTY/CARLENZOLI
 CIVIL AND SANITARY ENGINEERS / LAND SURVEYORS / PLANNERS
 225 SOUTH GATE AVENUE, SUITE 100, GARDEN GROVE, CALIFORNIA 92640 • TEL: (714) 342-6451

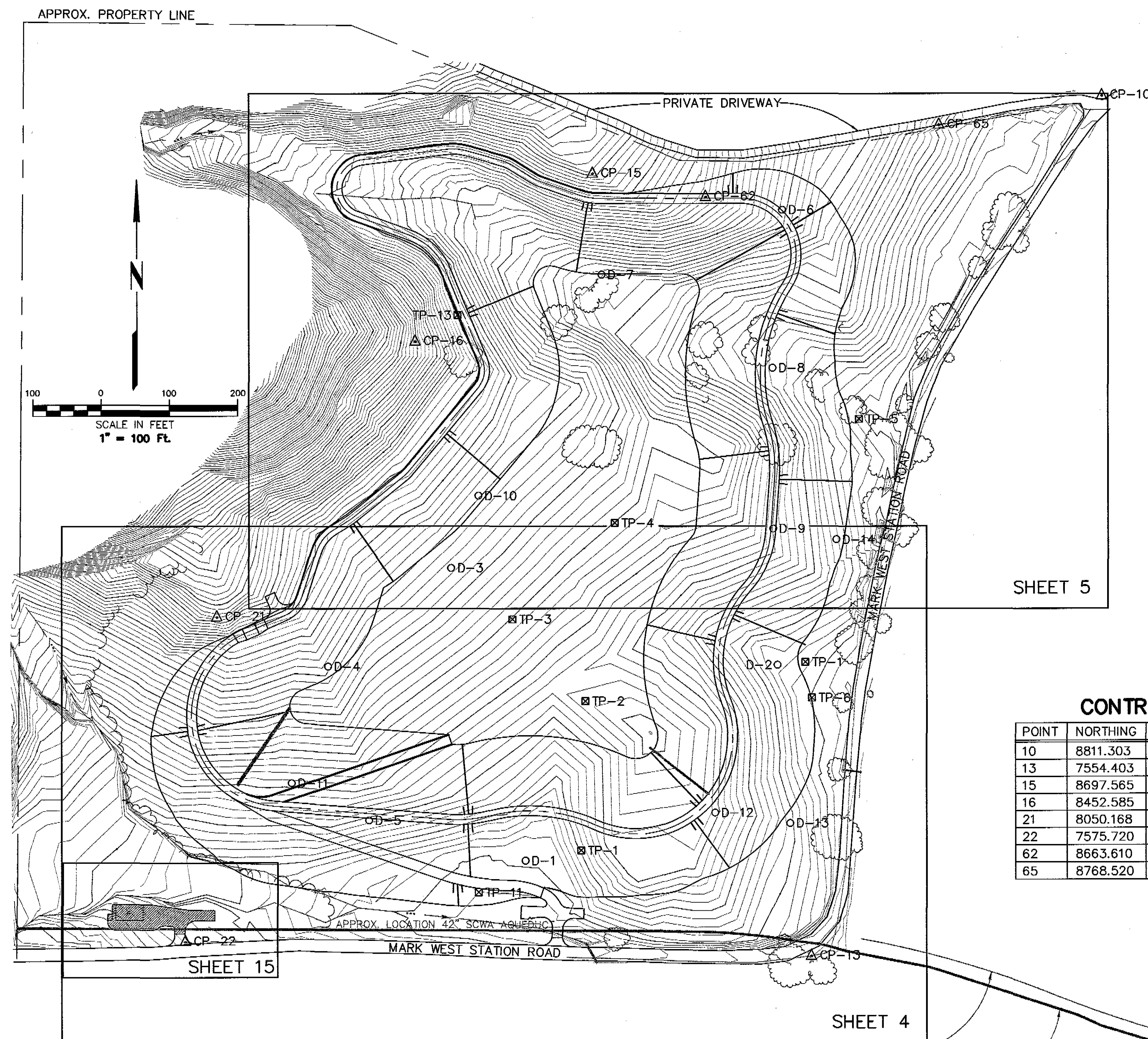
AIRPORT SEWER ASSESSMENT DISTRICT NO. 1
 TREATMENT, STORAGE AND DISPOSAL FACILITIES
 COUNTY SERVICE AREA NO. 31

GRADING PLAN

DATE: APRIL, 1995
 REVISIONS:
 DRAWN BY: H.J.
 CHECKED BY: T.K.V.
 JOB NO: 818.50
 DRAWING NUMBER: 33 of 62

42802
RECORD DWG.
 DATE: 3-3-86

P:\sanitation\airport\w sz\treatment plant\reservoirs\Airport Reservoir D\Record_Dwgs\70-6-102_103_R.dwg 05/20/2004 01:49:25 PM PDT



GEOTECHNICAL LEGEND

OD-10 BORING
TP-4 TEST PIT

SURVEY LEGEND

CP-12 SURVEY CONTROL POINT

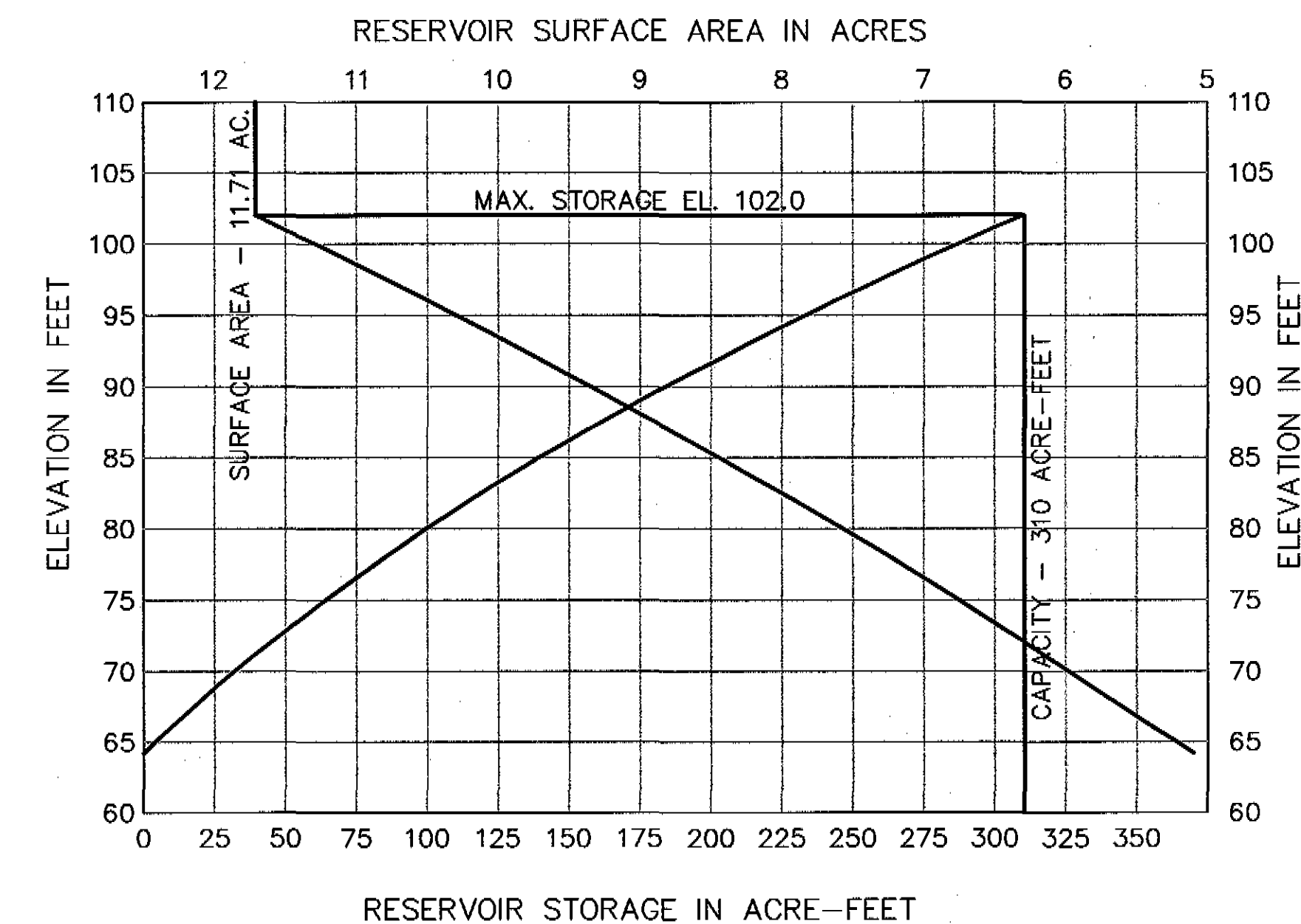
18" RECLAIMED WATER
APPROX. LOCATION 42" SCWA AQUEDUCT

KEY MAP

CONTROL DATA TABLE

POINT	NORTHING	EASTING	ELEVATION	DESCRIPTION
10	8811.303	3653.467	65.70	RR SPIKE
13	7554.403	3227.310	59.03	3/4" IP
15	8697.565	2906.197	110.57	REBAR
16	8452.585	2646.244	120.47	60D
21	8050.168	2355.755	112.24	REBAR
22	7575.720	2309.623	71.80	REBAR
62	8663.610	3072.114	97.41	3/4" IP
65	8768.520	3414.280	70.71	PK

AREA CAPACITY CURVES



RESERVOIR DATA

CAPACITY	310 AC-FT
TOP EMBANKMENT EL.	105.5
SPILLWAY WEIR EL.	102.5
NORMAL MAX. W.S. EL.	102.0
NORMAL MAX. W.S. AREA	11.71 AC.
BOTTOM EL.	64.2

EARTHWORK SUMMARY

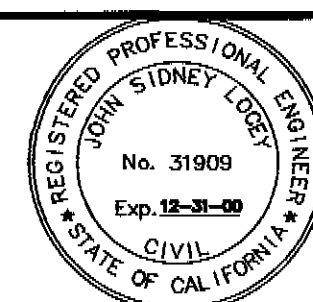
STRIPPING	9900 C.Y.
EXCAVATION	238,200 C.Y.
SUBEXCAVATION	81,500 C.Y.
EMBANKMENT	214,200 C.Y.
SHRINKAGE (7.5%)	24,000 C.Y.
NET	0 C.Y.

RECORD DRAWING

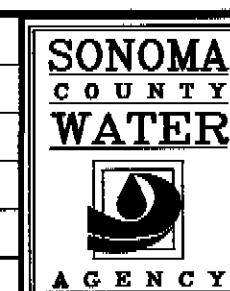
DATE: 7/22/03 BY: *Rich Lyle*

BRELJE & RACE

CONSULTING CIVIL ENGINEER JOHN S. LOCEY R.C.E. 31909
5570 SKYLANE BLVD. SANTA ROSA CA 95403 707/576-1322



NO.	DATE	REVISION	BY



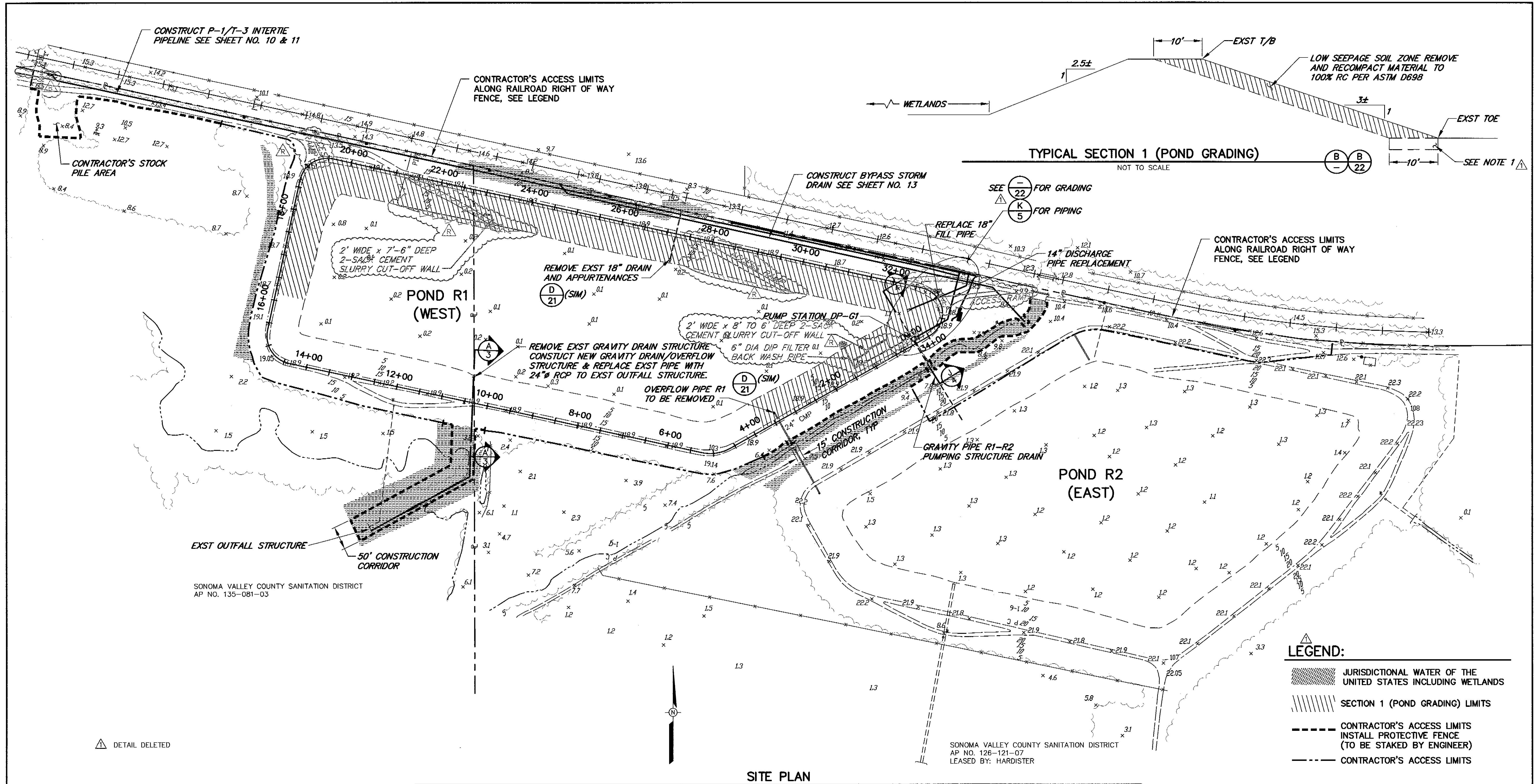
SCALE: AS SHOWN
DATE: MAY 2000
DRAWN: BB
CHECKED: DL

APPROVED DEPUTY CHIEF ENGINEER	RCE 54302
SUBMITTED	RCE 46862
DESIGNED	RCE 31909

AIRPORT - LARKFIELD - WIKIUP SANITATION ZONE
STORAGE AND RECLAMATION FACILITIES, AIRPORT RESERVOIR D
KEY MAP, RESERVOIR DATA & CAPACITY TABLES

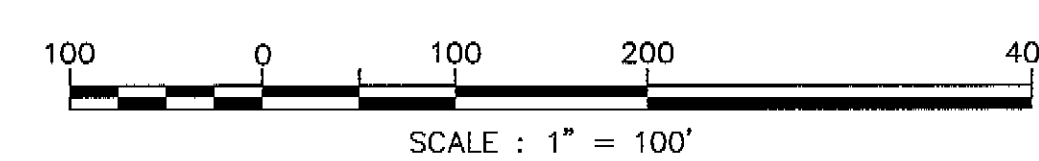
DRAWING NAME
DRAWING NUMBER 70-6-102.103_R

SHEET NO. 3 OF 27

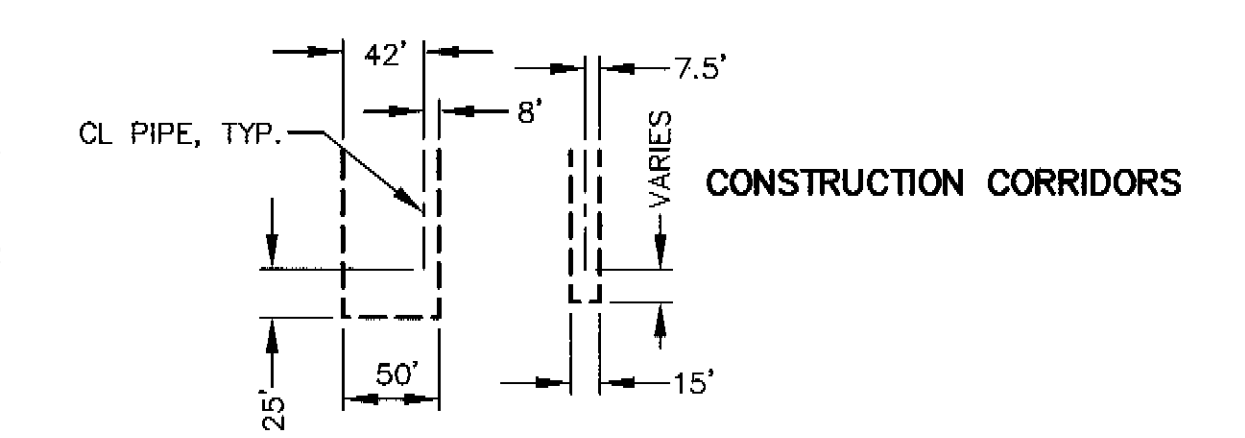


△ DETAIL DELETED

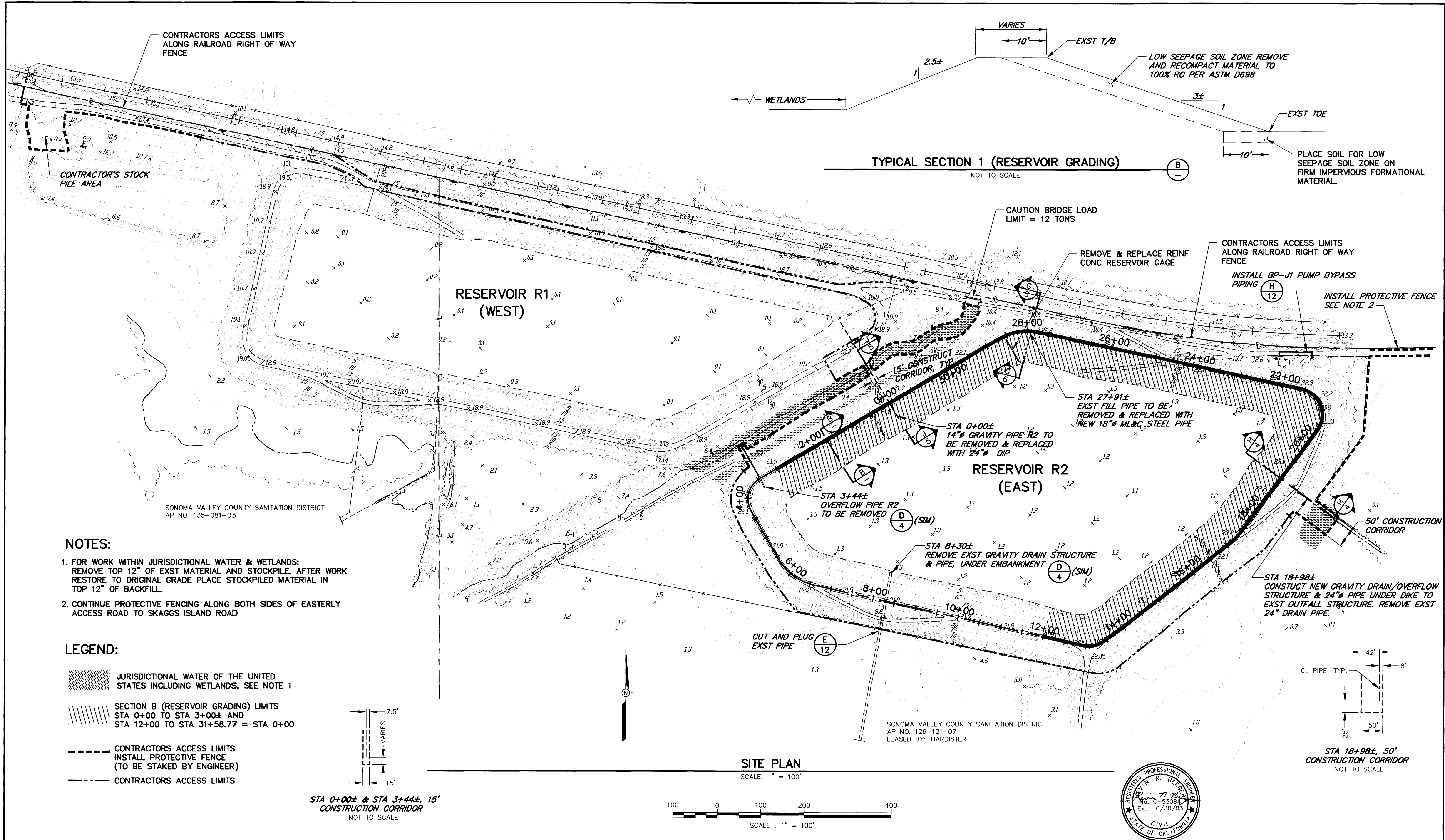
- NOTES:**
1. PLACE SOIL FOR LOW SEEPAGE SOIL ZONE ON FIRM IMPERVIOUS FORMATIONAL MATERIAL.



RECORD DRAWING
DATE: 3/17/00 BY: *R. H. F.*



				<div>SONOMA VALLEY COUNTY SANITATION DISTRICT</div>		SCALE: AS SHOWN		APPROVED DEPUTY CHIEF ENGINEER RCE C54302		RESERVOIR R1 EMERGENCY REPAIR PROJECT			
DATE: JUNE 14, 1999		SUBMITTED RCE C046862											
DRAWN: ADF\FJA		DESIGNED RCE C-53084				SITE PLAN AND DETAILS							
CHECKED:													
NO.		DATE		REVISION		BY							
		3/17/00		RECORD DRAWING									
		9/14/99		CHANGE ORDER NO. 1		KNB							
		6/22/99		ADDENDUM NO. 1		KNB							

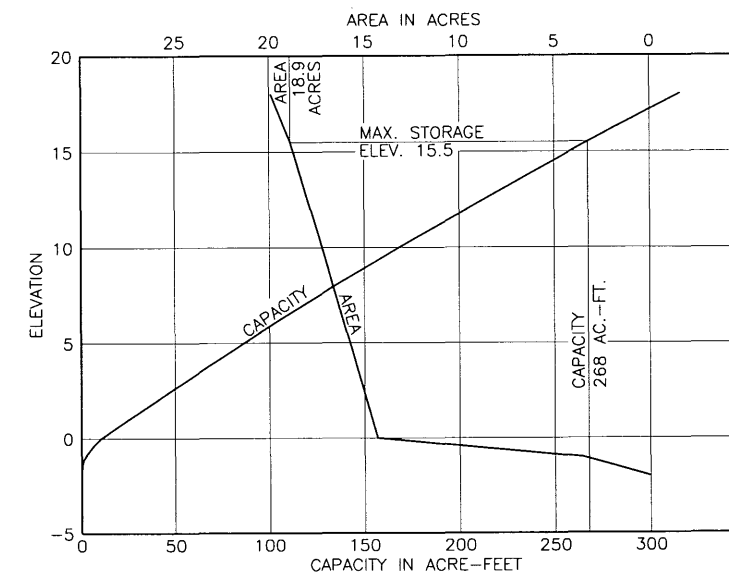
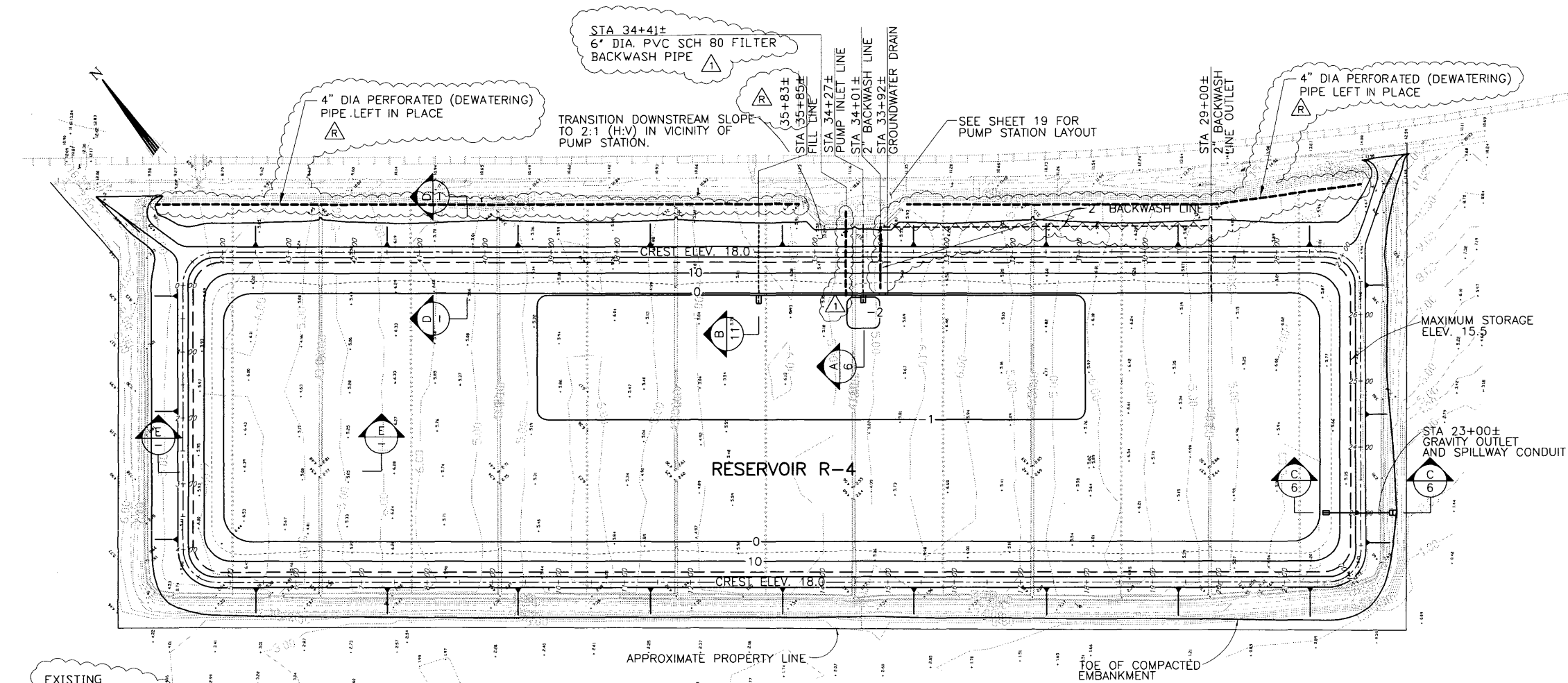


NO.	DATE	REVISION	BY

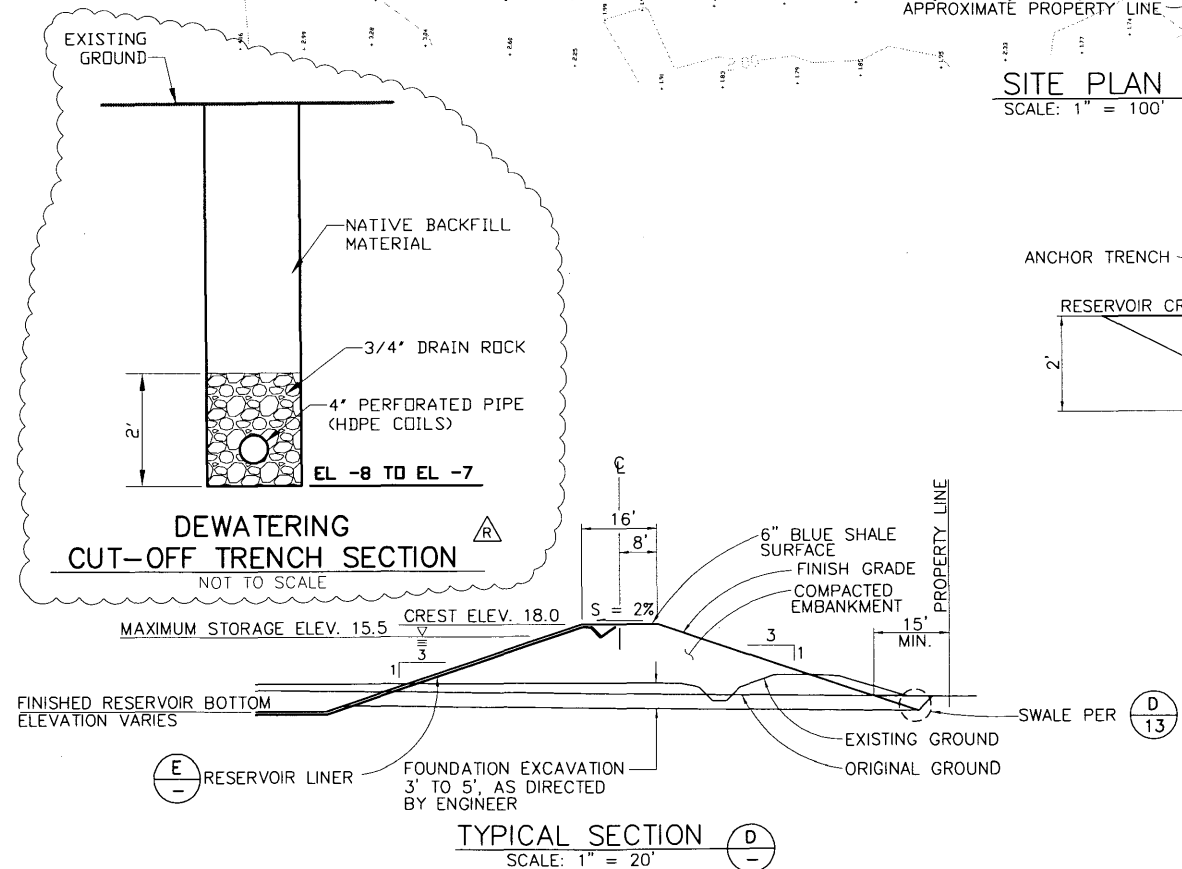
**SONOMA VALLEY
COUNTY SANITATION DISTRICT**

SCALE: AS SHOWN	APPROVED: DEPUTY CHIEF ENGINEER RCE C54302
DATE: JUNE 14, 2000	SUBMITTED: RCE C046862
DRAWN: ADF	DESIGNED: RCE C-53084
CHECKED:	REVIEW: A. Bayne

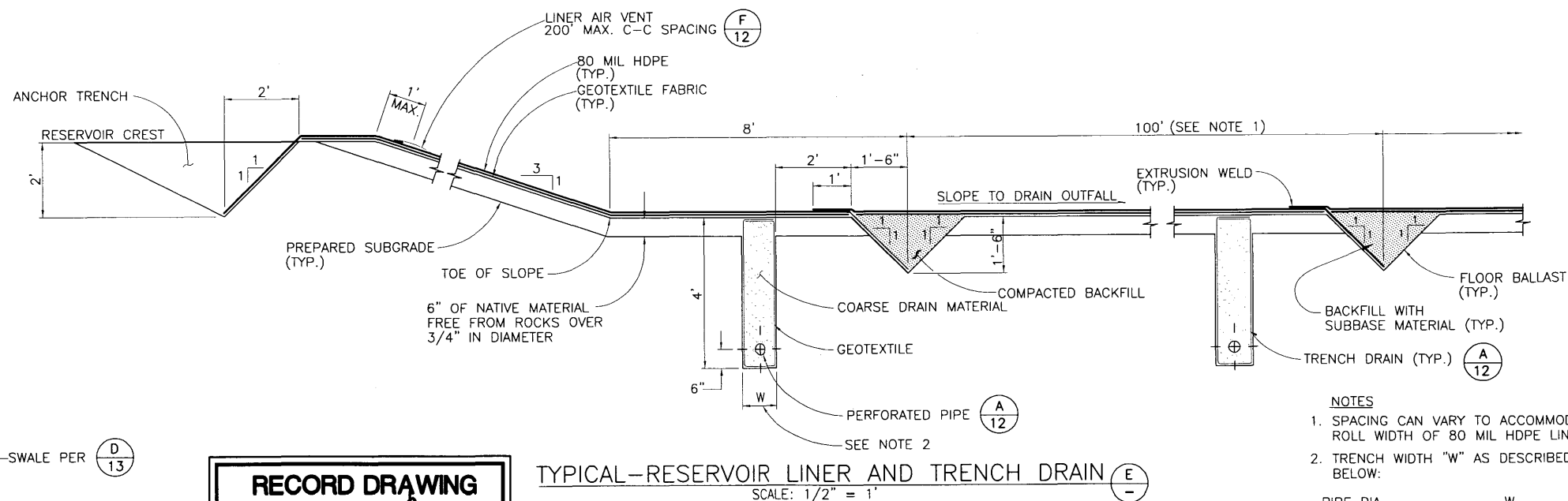
RESERVOIR R2 EMERGENCY REPAIR PROJECT	
SITE PLAN AND DETAILS	
SANITATION\SONOMA VALLEY CSD\RESERVOIRS\R2\12-364	DRAWING NUMBER
70-12-102.364	SHEET NO. 3 OF 21



AREA-CAPACITY CURVES



SITE PLAN
SCALE: 1" = 100'



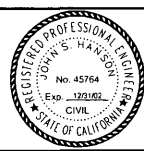
RECORD DRAWING
DATE: 10/14/03 BY: *[Signature]*

TYPICAL-RESERVOIR LINER AND TRENCH DRAIN
SCALE: 1/2" = 1'

NOTES

- SPACING CAN VARY TO ACCOMMODATE ROLL WIDTH OF 80 MIL HDPE LINER
- TRENCH WIDTH "W" AS DESCRIBED BELOW:

PIPE DIA.	W
4"	12"
6"	18"
12"	34"



JAMES C. HANSON
CONSULTING CIVIL ENGINEER
& CORPORATION

NO.	DATE	REVISION	BY
1	10/20/03	BACKWASH PIPE INSTALLED BY MAINTENANCE CREW	
2	10/14/03	RECORD INFORMATION	

**SONOMA VALLEY COUNTY
SANITATION DISTRICT**

SCALE: AS SHOWN
DATE: JUNE 14, 2001
DRAWN: RJB/KS
CHECKED: DPL

APPROVED DEPUTY CHIEF ENGINEER RCE C046862
SUBMITTED RCE C046862
DESIGNED RCE C045764

**EFFLUENT STORAGE RESERVOIR R4
RESERVOIR SITE PLAN, AREA-CAPACITY CURVES,
TYPICAL SECTION AND LINER DETAILS**

REVISIONS/R4-EFFLUENT_STORAGE_PROJ/C05
DRAWING NUMBER

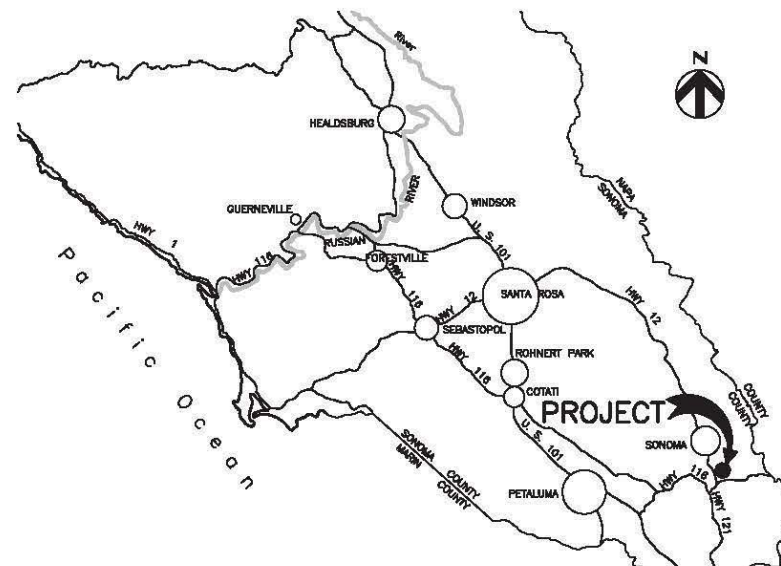
70-12-102.123 SHEET NO. 5 of 35

North Bay Water Reuse Program SONOMA VALLEY EFFLUENT RESERVOIR R5

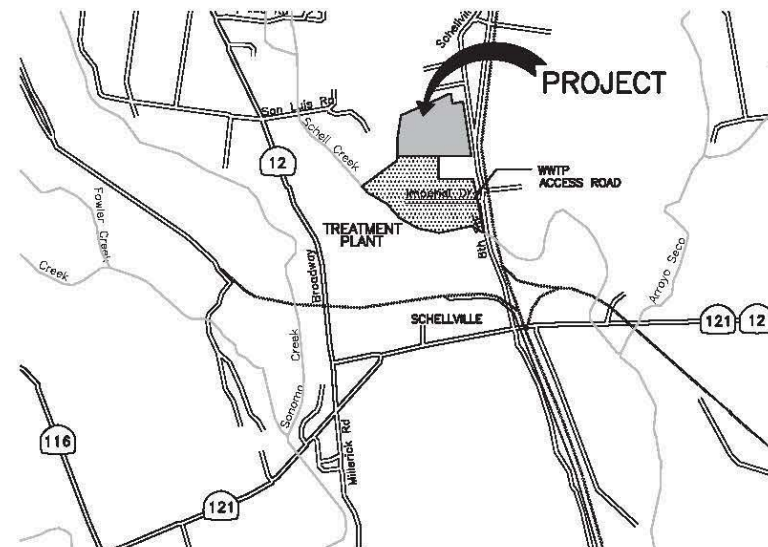
Sonoma Valley County Sanitation District

January 2011

Contract No. 70-12-7 #45



VICINITY MAP
NTS



LOCATION MAP
NTS

SHEET LIST

GENERAL

G01	COVER SHEET, LOCATION AND VICINITY MAPS, SHEET LIST, AND GENERAL NOTES
G02	GENERAL NOTES, ABBREVIATIONS AND SYMBOLS
G03	PROCESS FLOW SCHEMATIC AND DESIGN CRITERIA
G04	STANDARD DETAILS
G05	STANDARD STRUCTURAL DETAILS I
G06	STANDARD STRUCTURAL DETAILS II
G07	STANDARD STRUCTURAL DETAILS III
G08	STANDARD STRUCTURAL DETAILS IV
G09	STANDARD STRUCTURAL DETAILS V
G10	STANDARD STRUCTURAL DETAILS VI

CIVIL

C01	OVERALL SITE PLAN AND RESERVOIR CAPACITY CURVE
C02	EFFLUENT STORAGE RESERVOIR SITE PLAN
C03	EFFLUENT STORAGE RESERVOIR ENLARGED AREA PLAN
C04	EFFLUENT STORAGE RESERVOIR SECTIONS AND DETAILS I
C05	EFFLUENT STORAGE RESERVOIR SECTIONS AND DETAILS II
C06	EFFLUENT STORAGE RESERVOIR SECTIONS AND DETAILS III
C07	EFFLUENT STORAGE RESERVOIR SECTIONS AND DETAILS IV
C08	RESERVOIR INLET PIPE AND CHEMICAL FEED AREA PLANS, SECTIONS AND DETAILS
C09	24" RESERVOIR INLET PIPE & 24" OVERFLOW PIPE PLAN AND PROFILE
C10	WATMAUGH EXPORT PIPE PLAN AND PROFILE

STRUCTURAL/PROCESS

SP01	RESERVOIR EXPORT PUMPING STATION DECK LEVEL PLAN
SP02	RESERVOIR EXPORT PUMPING STATION SECTIONS AND DETAILS I
SP03	RESERVOIR EXPORT PUMPING STATION SECTIONS AND DETAILS II
SP04	MOTOR CONTROL CENTER FOUNDATION PLAN, SECTION AND DETAILS

ELECTRICAL

E01	ELECTRICAL SYMBOLS AND LEGEND
E02	ELECTRICAL SITE PLAN
E03	EXPORT PUMPING STATION AND MCC-R ELECTRICAL PLANS
E04	SINGLE LINE DIAGRAM, CONTROL DIAGRAMS AND SCHEDULES
E05	ELECTRICAL DETAILS
E06	DUCT BANK WIRING AND CONDUIT SCHEDULES

GENERAL NOTES

- HORIZONTAL DATUM:**
CALIFORNIA COORDINATE SYSTEM ZONE 2, NAD 1983
- VERTICAL DATUM:**
BASED ON MEAN SEA LEVEL DATUM OF 1929. A U.S.C. AND G.S. BRONZE DISK STAMPED "L 470 1951" FOUND APPROXIMATELY 1.0 MILE SOUTHEAST ALONG THE SOUTHERN PACIFIC RAILROAD COMPANY TRACKS FROM THE STATION AT SCHELLVILLE, AND 250'± NORTHWEST OF BURNDAL ROAD. BENCHMARK IS SET IN THE TOP OF THE NORTHWEST END OF THE NORTHEAST CONCRETE HEADWALL, 7.4' NORTHEAST OF THE NORTHEAST RAIL ELEVATION 6.51'.
- PROJECT BENCHMARK:**
A 1 1/2" BRONZE DISK STAMPED "SV-1 EL 23.43" AND SET IN THE CONCRETE BASE OF THE FLAGPOLE AT THE SOUTHEAST CORNER OF THE SONOMA VALLEY TREATMENT PLANT OPERATIONS BUILDING. ELEVATION 23.43'.

HDR
HDR Engineering, Inc.

	04/05/11	CONFORMED
0	1/20/2011	ISSUED FOR BID
ISSUE	DATE	DESCRIPTION

PROJECT MANAGER	CRAIG OLSON, PE
DESIGNED	R. NATOLI
CHECKED	C. OLSON
DRAWN	P. VAN MEURS
PROJECT NUMBER	9240-144993
DISTRICT PROJECT	7487

REVIEWED	<i>[Signature]</i>
REVIEWED	<i>[Signature]</i>



North Bay Water Reuse Program
**Sonoma Valley
Effluent Reservoir R5**

Sonoma Valley
County Sanitation District

GENERAL

COVER SHEET, LOCATION AND VICINITY MAPS,
SHEET LIST AND GENERAL NOTES



FILENAME	144993_G01.dwg
SCALE	NONE

SHEET	G01
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SEE RESERVOIR PLAN,
SEE SHT C02

EASEMENT

DISTRICT
PROPERTY

RESERVOIR R5

RESERVOIR EXPORT
PUMPING STATION,
SEE SHT SP01

SEE ENLARGED
AREA PLAN,
SHEET C03

EXISTING FILTER
CONTROL BUILDING

SEE WATMAUGH
EXPORT PIPE PLAN AND
PROFILE, SHEET C10

EXISTING
EQUALIZATION
BASIN NO. 1

EXISTING
EQUALIZATION
BASIN NO. 2

EXISTING
WASTEWATER PLANT SITE

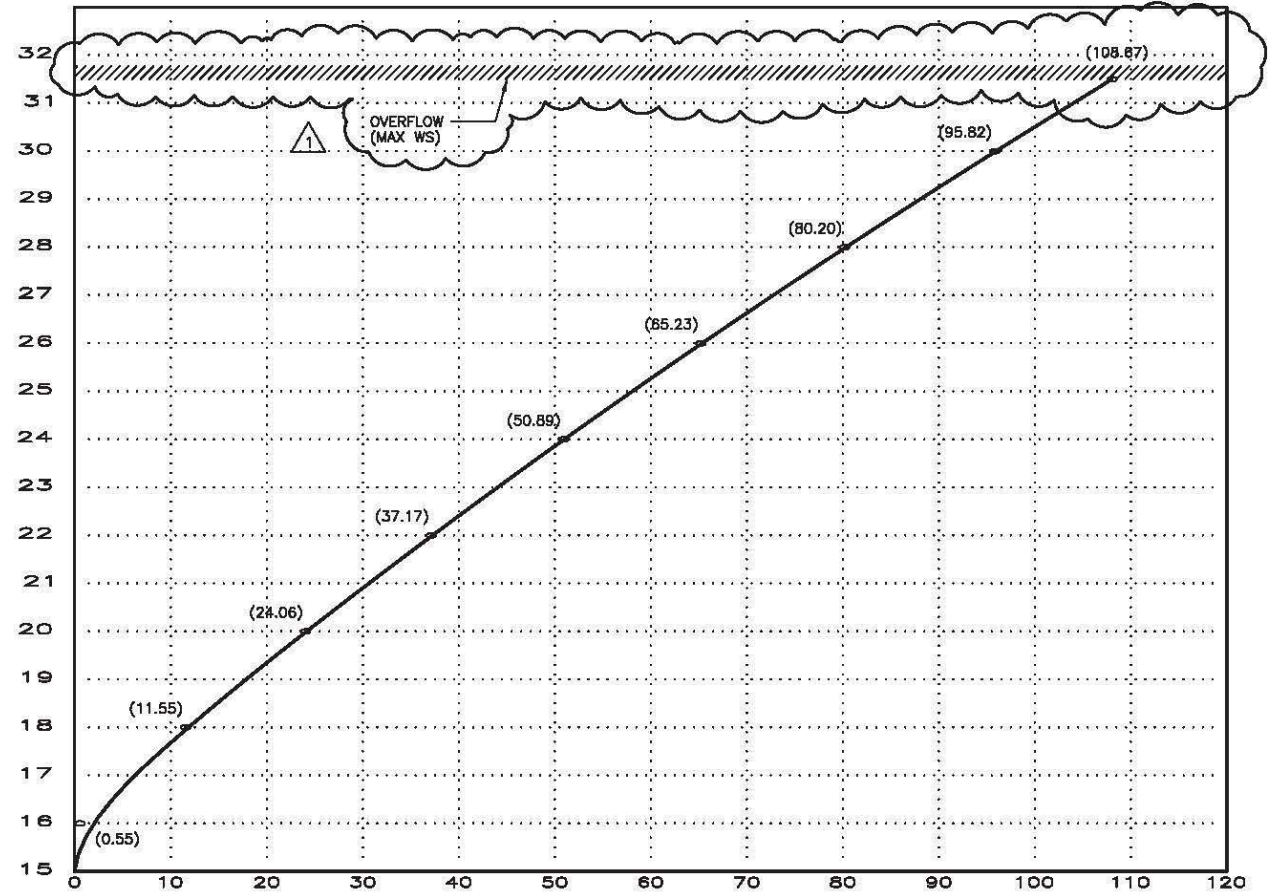
EXISTING BLOWER BUILDING

PLANT
ENTRANCE

8th ST EAST

OVERALL SITE PLAN
1"=100'

WATER SURFACE ELEVATION
(FT ABOVE MSL)



VOLUME: ACRE- FEET

RESERVOIR R5 CAPACITY CURVE
AS NOTED

HDR
HDR Engineering, Inc.

1

04/05/11
1/20/2011

CONFORMED
ISSUED FOR BID

ISSUE

DATE

DESCRIPTION

PROJECT MANAGER CRAIG OLSON, PE

DESIGNED R. NATOLI
CHECKED C. OLSON

DRAWN P. VAN MEURS
PROJECT NUMBER 9240-144993
DISTRICT PROJECT 7487

REVIEWED

REVIEWED



North Bay Water Reuse Program
Sonoma Valley
Effluent Reservoir R5

Sonoma Valley
County Sanitation District

CIVIL

OVERALL SITE PLAN AND
RESERVOIR CAPACITY CURVE

0 1" 2"

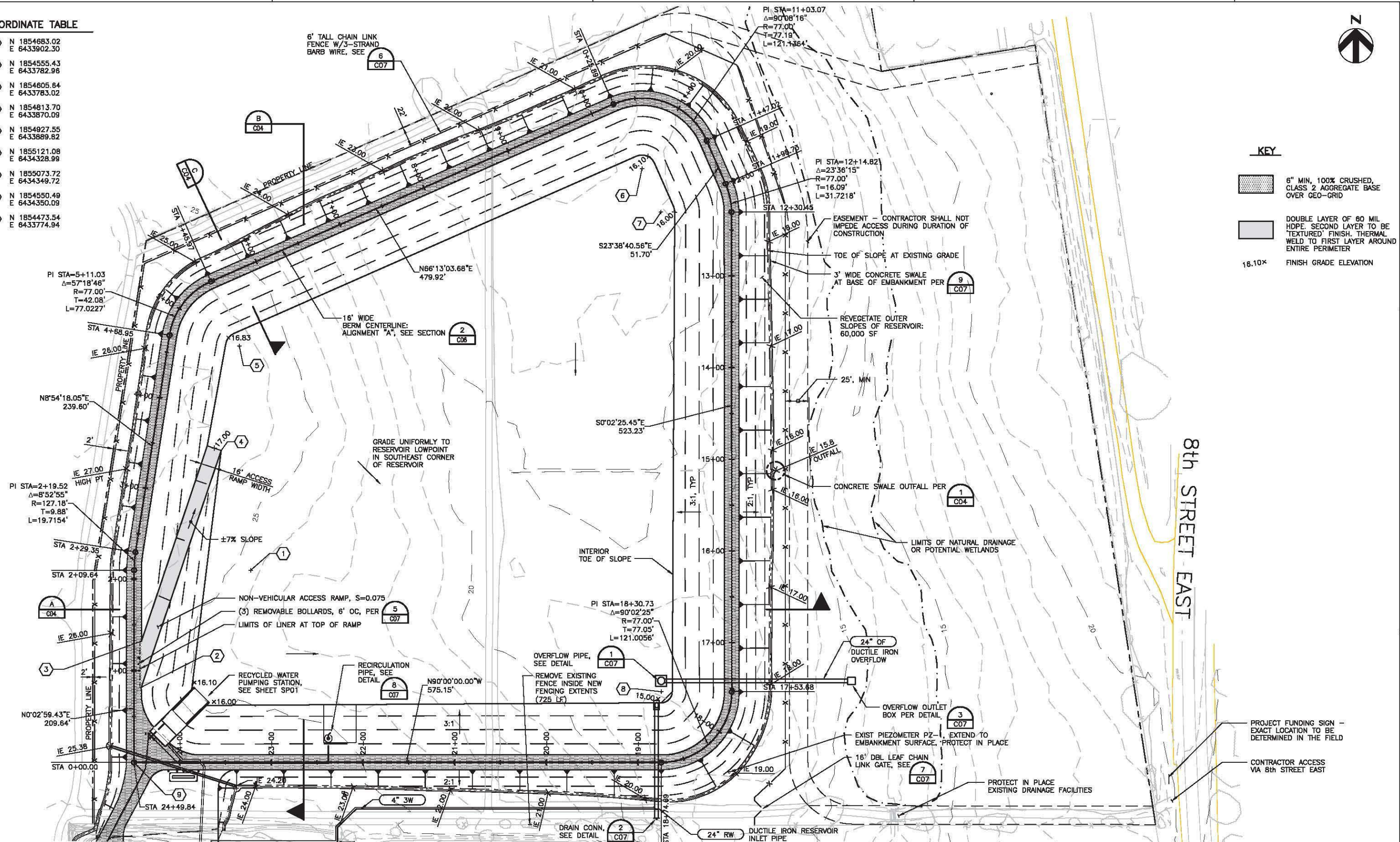
FILENAME 144993_C01.dwg
SCALE AS NOTED

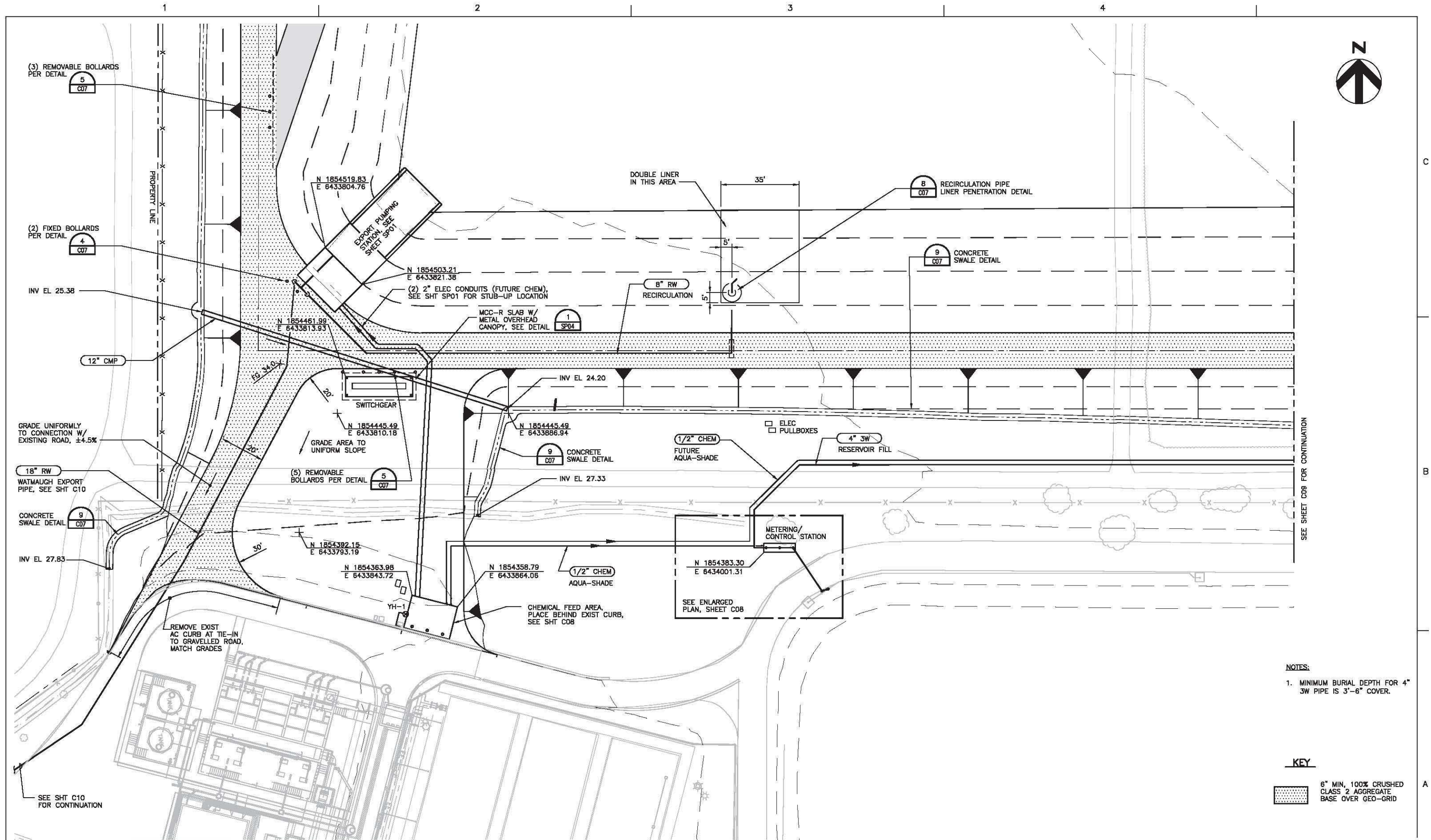
SHEET

C01

COORDINATE TABLE

1	N 1854683.02 E 6433902.30
2	N 1854555.43 E 6433782.96
3	N 1854605.84 E 6433783.02
4	N 1854813.70 E 6433870.09
5	N 1854927.55 E 6433889.82
6	N 1855121.08 E 6434328.99
7	N 1855073.72 E 6434349.72
8	N 1854550.49 E 6434350.09
9	N 1854473.54 E 6433774.94





NOTES:
1. MINIMUM BURIAL DEPTH FOR 4\"/>

KEY
6\"/>

			PROJECT MANAGER	CRAIG OLSON, PE		North Bay Water Reuse Program Sonoma Valley Effluent Reservoir R5 Sonoma Valley County Sanitation District	CIVIL EFFLUENT STORAGE RESERVOIR ENLARGED AREA PLAN	FILENAME 144993_C03.dwg SCALE 1"=20'	SHEET C03
			DESIGNED	R. NATOLI					
			CHECKED	C. OLSON					
			DRAWN	P. VAN MEURS					
	04/05/11	CONFORMED	PROJECT NUMBER	9240-144993					
	1/20/2011	ISSUED FOR BID	DISTRICT PROJECT	7487					
ISSUE	DATE	DESCRIPTION							

**Exhibit D
Pricing Sheet**

NAME OF PROPOSER: _____

ADDRESS: _____

TELEPHONE: _____

In accordance with the Request For Proposal, the undersigned declares that the services offered are in accordance with requirements of the RFP. Further, the undersigned declares that he/she is authorized to enter into an agreement on behalf of the above named business.

PV System Description

Pond Location: _____

Item	Description	Manufacturer	Model#	Qty	Total Capacity (MW DC)
1	PV Modules				
2	Inverter(s)				

PV System Performance

Estimated MWh (AC) produced year one _____

Costs

Proposer to provide all services, material, and equipment necessary to provide the Water Agency with electrical power for the following price:

First Year Total Energy Cost- \$/MWh (AC)	\$
First Year Energy Cost Attributable to Lease Only- \$/MWh (AC)	\$
Energy Cost Escalation Rate- %	%
Term- Years	Yrs
Cost of Removal at end of Term	\$

Lease Area

Estimated square footage of PV System including any ground mounted equipment (inverters, pads, etc), if applicable _____ x \$0.018/sf/yr = \$_____ per year

It is hereby understood that the above proposal reflects the total cost of the PV system proposed.

Name

Title

Date



COUNTY OF SONOMA

GENERAL SERVICES PURCHASING DIVISION

2300 COUNTY CENTER DRIVE, SUITE A208
SANTA ROSA, CALIFORNIA 95403
(707) 565-2433 Fax: (707) 565-6107

DECLARATION OF LOCAL BUSINESS FOR SERVICES

Sonoma County gives local businesses a preference in formal solicitations of services as set forth in the County of Sonoma Local Preference Policy for Services.

In order to qualify for this preference, a business must meet *all* of the following criteria:

1. For businesses with a location in a city within Sonoma County, a valid business license if required by the city; and
2. A valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day basis.

By completing and signing this form, the undersigned states that, under penalty of perjury, the statements provided herein are true and correct and that the business meets the definition of a local business as set forth in the County of Sonoma Local Preference Policy for Goods.

All information submitted is subject to investigation as well as disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid not being considered for application of the County's local preference policy. False or dishonest responses will cause the rejection of the bid and curtail the declarant's ability to conduct business with the County in the future. It may also result in legal action.

1. Legal name of business: _____
2. Physical address of the principal place of business.

3. Business license issued by incorporated city within the County:

License Number _____ Issued by: _____

Authorized Signature: _____ Date: _____

Printed Name & Title: _____